



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

Case Reference : **LON/00AG/LBC/2023/0043**

Property : **Flat 43, Trinity Court, 254 Grays Inn Road, London WC1X 8JX**

Applicant : **Deritend Investments (Birkdale) Ltd**

Representative : **Dale & Dale Solicitors Ltd**

Respondent : **Victor Richard Stockinger
Irma Maria Stockinger**

Type of Application : **Breach of covenant**

Tribunal Members : **Judge Nicol
Mr O Dowty MRICS**

Date and venue of Hearing : **27th October 2023
10 Alfred Place, London WC1E 7LR**

Date of Decision : **27th October 2023**

DECISION

The Tribunal has determined that the Respondents have breached clause 2(10) of their lease as detailed below.

The Tribunal's reasons

1. The Applicant is the head lessee of a block of flats containing the subject property of which the Respondents are the lessees. The Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondents have breached their lease.
2. Further to the Tribunal's directions issued on 17th July 2023, the Tribunal heard the application at a face-to-face hearing on 27th October 2023. The attendees were:

- Mr Comport, Dale & Dale Solicitors, representing the Applicant
 - The Applicant's witnesses:
 - Mr Paulo Gomes
 - Mr Edward Natt
 - Mr Daniel Weil
 - The First Respondent
3. In accordance with the Tribunal's directions, the Applicant had produced a bundle of 65 pages containing relevant documents.
 4. The Respondents' bundle was due by 11th September 2023. The Respondent did not seek an extension of time from either the Applicant or the Tribunal. Instead, a bundle of 21 pages arrived by email two days before the hearing. A supplemental bundle of a further 8 pages arrived even later. By paragraph 2 of their Statement of Case, the Respondents sought leave to rely on their documents on the basis that some only became available after the deadline.
 5. The Tribunal is not satisfied with the Respondents' explanation. The First Respondent is a solicitor practising as a sole practitioner. He should know the importance not only of compliance with directions but also of the need for a party to disclose their case sufficiently far in advance of a final hearing that the other party has a fair opportunity to prepare their case. Moreover, he should be aware of the need to explain to the Tribunal with good reasons, supported by evidence, any failure to comply with directions or to act in manner which is fair to the other party.
 6. The First Respondent asserted that he has been out of the country and, despite having arrangements by which someone picks up and forwards his mail, was unaware of any correspondence from the Applicant or the Tribunal until very recently.
 7. In the circumstances, the Tribunal was minded to refuse to look at the Respondents' late evidence. In the event, the Tribunal did read the material but found it to be mostly irrelevant to the limited issue the Tribunal had to consider.
 8. In any event, this is a simple, straightforward case. The Applicant seeks a declaration that a term of the lease has been breached on one occasion. The Tribunal has no power to determine the consequences of any such breach. Whether there are extenuating circumstances which would allow relief from forfeiture or whether the landlord has an alternative remedy is irrelevant at this stage. It is open to the Respondents to argue in any subsequent proceedings that the breach was not sufficiently serious to justify particular sanctions and their evidence may well be relevant and admissible then, assuming that they comply with relevant directions first.
 9. The Applicant alleged that the Respondents breached the following clauses of their lease:-

2. THE Lessee ... HEREBY COVENANTS with the Lessor as follows that is to say:-

10) To permit the Lessor and its Agents and workmen after reasonable notice in writing at all reasonable times during the said term to enter upon the Flat to view the condition thereof ...

10. By letter dated 9th June 2023 the Applicant's solicitor, Mr Comport of Dale & Dale Solicitors, wrote to the Respondents explaining that access would be required and asked for convenient dates. None were forthcoming. Those who were to be attending, the Applicant's surveyor, Mr Natt, and agent, Mr Gomes, agreed they would attend at 1pm on 26th June 2023. By letter dated 20th June 2023 Mr Comport notified the Respondents that Mr Natt and Mr Gomes would be attending at that time, on that date, to inspect the Flat.
11. Mr Natt and Mr Gomes attended at the appointed time but there was no response when they knocked on the front door several times and they had to give up without achieving the desired access.
12. The Applicant has a right of access subject to conditions set out in clause 2(10) of the Respondents' lease. Those conditions were complied with. The Respondents clearly breached their lease.
13. The Respondents claim they have excuses for their failure to provide access and even that the application to the Tribunal is "unnecessary" but, as already pointed out, those are not matters for the Tribunal.
14. The First Respondent argued that the notification of 20th June 2023 was not served. Clause 3(ii) of the lease deems service when a notice is sent by post. The First Respondent asserted that post sometimes goes astray and Mr Comport sometimes mis-addresses correspondence. The Tribunal accepts that this is probably so but there is no evidence to that effect here. The letters to the Respondents were correctly addressed. The First Respondent volunteered that they may still be amongst mail picked up from his property and forwarded to him but not yet received. The Applicant has comfortably exceeded the standard of proof, namely the balance of probabilities, to establish that the requisite notice was served.
15. The First Respondent also argued that clause 2(10) had ceased to be enforceable due to the length of time in which the Applicant had failed to invoke it. However, this was an issue only raised in his very late submissions. He had no evidence to support it and the Applicant had had no time to produce evidence of their own. He did not come close to being able to establish this argument.

Name: Judge Nicol

Date: 27th October 2023