



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

Case reference : **LON/00BK/LBC/2023/0051**

Property : **Flat 3, Lascelles House, Harewood Avenue, Blandford Estate, London, NW1 6NS.**

Applicant : **The Lord Mayor and Citizens of City of Westminster**

Representative : **Andrew Pye, Leasehold Litigation Officer**

Respondent : **Gabriel Ben-Soussan**

Representative : **Not Represented**

Type of application : **Determination of an alleged Breach of Covenant (Section 168 (4) Commonhold and Leasehold Reform Act 2002)**

Tribunal member(s) : **Tribunal Judge B MacQueen
Tribunal Member M Krisko, FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **28th November 2023**

DECISION

Decision of the Tribunal

For the reasons set out below, the Tribunal finds that the Respondent has breached clause 18(a) of the seventh schedule to the Lease of the Property.

The Background

1. The Applicant is the freehold owner of Lascelles House, Harewood Avenue, Blandford Estate, London, NW1 6NS (“the Building”). The freehold title is registered under title number NGL31577.

2. The Respondent is the leasehold owner of the property known as Flat 3 Lascelles House, Harewood Avenue, Blandford Estate, London NW1 6NS (“the Property”) pursuant to a lease dated 12 June 1991 made between (1) The Lord Mayor and Citizens of the City of Westminster and (2) Giacomo Vincenzo Natella and Carol Elizabeth McKnight (“the Lease”), for a term of 125 years from 12th June 1991 and registered under title number NGL684807.
3. The Property comprises a one-bedroom ground floor flat at the Building.
4. The Applicant seeks a determination pursuant to section 168 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that the Respondent is in breach of covenant in the Lease.

The Hearing

5. On 29 August 2023, Directions were given by the Tribunal which included that the Applicant was to prepare a bundle of documents to use at the hearing and send these to the Tribunal and the Respondent by 26 September 2023. The Respondent was directed to prepare a bundle of documents to use at the hearing and send these to the Tribunal and the Applicant by 24 October 2023.
6. On 30 October 2023, the Respondent emailed the Tribunal to say that the matter had been fully resolved and payment made for the local authority’s legal fees. The Tribunal case worker allocated to this case replied by email on 30 October 2023 confirming that all correspondence sent to the Tribunal must also be sent to the Applicant. The Tribunal case worker also emailed a letter marked for the Respondent’s urgent attention that warned that the Directions made in this case have not been complied with and also warned that as the bundle of documents had not been sent to the Tribunal by 24 October 2023, the Respondent had to contact the Tribunal within two days to explain why the direction had not been complied with.
7. No further correspondence was received by the Tribunal from the Respondent and neither party to these proceedings has made any application for the matter to be vacated or withdrawn.
8. On the morning of the hearing (28 November 2023), as the Respondent had not attended, the Tribunal passed a copy of the email exchange outlined in paragraph 6 above to the representative for the Applicant. The Applicant’s representative confirmed that a copy of this correspondence had not been sent to the Applicant. The Applicant further confirmed that the matter had not settled, and the Applicant wished to continue with its application.

9. The hearing was scheduled to start at 10am, however, the Respondent had not attended. The Tribunal waited until 10.15am but as the Respondent had still not attended or contacted the Tribunal to provide any explanation for not attending, the Tribunal proceeded in the Respondent's absence.
10. In reaching its decision to proceed in the absence of the Respondent, the Tribunal took into account that the Tribunal case officer had told the Respondent that they needed to copy their email correspondence to the Tribunal to the Applicant, but this had not been done. The Tribunal also noted that paragraph (a) of the Notes section of the Directions of 29 August 2023 also set out that when an email is sent to the Tribunal this must also be sent to the other party. Additionally, the Tribunal noted that the Directions made on 29 August 2023 informed parties that they were not able to change the date of the final hearing themselves and also confirmed that if the Respondent failed to comply with the directions, the Tribunal may bar them from taking any further part in these proceedings. This had further been communicated to the Applicant by letter dated 30 October 2023. No application for adjournment or withdrawal of these proceedings had been made. The Tribunal was therefore satisfied that the Respondent was aware of the hearing and had not provided a reason for their non-attendance. The Tribunal therefore proceeded in the Respondent's absence.
11. The Tribunal heard oral submissions from Mr Pye on behalf of the Applicant. The Tribunal also considered the bundle of documents submitted by the Applicant consisting of 148 pages. The Respondent had not provided the Tribunal with a bundle of documents.
12. The Tribunal did not consider that inspecting the Property was necessary or proportionate to the issues in dispute. Additionally, neither party requested an inspection.

The issues

13. This is an application for a determination that the Respondent has breached clause 18(a) under the seventh schedule of the Lease, namely:

“Not to use or permit the Premises to be used other than as a single private residence for occupation by an individual or an individual and his family as his or their only or principal home”.
14. At the hearing, Mr Pye clarified that he was seeking a declaration that there had been a breach of covenant because the Property had been used other than as a single private residence (namely by allowing paying guests to use the Property) between the period of 12 July 2023 to 17 July 2023.

15. The relevant parts of Section 168 of the Commonhold and Leasehold Reform Act 2002 provide 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 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.

(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) For the purposes of subsection (4), “appropriate tribunal” means—

(a) in relation to a dwelling in England, the First-tier Tribunal...

The Applicant’s Case

16. The written statement of Charlie Howard, Leasehold Services Teams Manager employed within the Applicant’s Housing and Commercial Partnerships Directorate, dated 25 September 2023 (pages 113- 148 of the Applicant’s bundle) states that on 16 June 2023 the Applicant received a complaint that the Property was being used for short-term letting. On 26 June 2023 Charlie Howard wrote to the Respondent requiring the Respondent to cease this activity and this was followed by emails sent on 3 July 2023, 6 July 2023 and 11 July 2023. Additionally, the Applicant stated in its application form that on 3 July 2023, a job order was raised to remove two key safes that were fixed to the exterior wall of the Premises.

17. The written statement of Imran Miah, Leasehold Advisor in the Leasehold Operations Team within the Applicant’s Housing and Commercial Partnerships Directorate, dated 21 September 2023 (pages 29-112 of the Applicant’s bundle) confirms that he visited the Property on 12 July 2023 and found a guest at the Property who had booked the Property via Airbnb.com for the period of 2 July 2023 until 17 July 2023.

The Respondent's Case

18. The Respondent has not provided the Tribunal with a bundle of documents and did not attend the hearing.

The Tribunal's determinations

19. The Tribunal considered the written statements of Charlie Howard and Imran Miah and accepted their evidence. In particular, the Tribunal accepted that when Imran Miah visited the Property on 12 July 2023, he spoke to a guest who had paid to stay at the Property and that this guest confirmed that she had found this accommodation via an advertisement that had been placed on the Airbnb.com website. Additionally, we accept the evidence contained in the exhibit IM5, which is a screen shot of the booking details of the guest to use the Property for the period 2 July to 17 July 2023. The statements of both Charlie Howard and Imran Miah confirm that the Property was advertised on www.booking.com and Airbnb.co.uk.
20. On the basis of the Applicant's evidence, the Tribunal is satisfied that the Property was advertised as accommodation for paying strangers and was occupied by a guest between the period of 12 July to 17 July 2023 on a short-term basis after that guest responded to an internet advertisement.
21. Turning to the terms of the lease, Clause 18(a) of the seventh schedule of the Lease provides that the Tenant covenants:

“Not to use or permit the Premises to be used other than as a single private residence for occupation by an individual or an individual and his family as his or their only or principal home”.

The Tribunal finds, on a balance of probabilities, that the short-term occupation by paying strangers between the period of 12 July and 17 July 2023 means that the Property was being used in breach of clause 18(a). The advertising of the Property on websites means that the property was available to all. It was occupied by a paying guest for the relevant period (namely 12 July to 17 July 2023), and therefore it was not used as a single private residence by an individual or his family as their only or principal home given that it was being used for short-term occupation by a paying stranger.

22. Accordingly, the Tribunal finds, on the balance of probabilities, that the Respondent, whether themselves or by an agent, advertised and allowed the Property to be used as accommodation for paying guests in breach of clause 18 (a) of the seventh schedule of the Lease.

Cost Applications

23. There were no cost applications. The representative for the Applicant confirmed that the Respondent had paid £1 179.27 to the Applicant by way of costs.

Name: Judge B MacQueen

Date: 28 November 2023

Rights of appeal

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.

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.

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.

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.

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.

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