



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

Case Reference : **MAN/00CX/LBC/2023/0013**

Property : **31 Ronan Way
Bradford
BD9 6FE**

Applicant : **Home Group Limited**

Representative : **N/A**

Respondent : **Faisal Aslam**

Representative : **Proctor & Hobbs, Solicitors**

Type of Application : **Commonhold & Leasehold Reform
Act 2002 – section 168(4)**

Tribunal Member : **Judge J Holbrook**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **11 March 2024**

DECISION

DECISION

Breaches of covenant in the lease of the Property (dated 30 September 2022) have occurred by reason of the Property having been underlet in contravention of paragraph 9.2 of the Schedule 4 to the Lease.

REASONS

Background

1. On 12 July 2023, an application was made to the Tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition has occurred in a lease of a property known as 31 Ronan Way, Bradford BD9 6FE (“the Property”).
2. The lease in question (“the Lease”) is dated 30 September 2022 and was made between the Applicant (as landlord) and the Respondent (as leaseholder). It is a shared ownership lease granted for a term of 125 years from 1 June 2021 at an initial annual rent of £3,750. The Lease contains “staircasing” provisions by which the Respondent may increase his ownership share in the Property, incrementally, from 25% to 100%. The transaction by which the Respondent’s share is ultimately increased to 100% (and the Applicant’s is reduced to 0%) is referred to in the Lease as “Final Staircasing”.
3. The application was therefore made by the landlord named in the Lease, and was founded upon an alleged breach of a covenant not to underlet or part with possession of the whole of the Property prior to Final Staircasing.
4. On 4 September 2023, the Tribunal gave directions for the conduct of the proceedings. The parties were informed that this matter was considered suitable for a determination without an oral hearing unless either party gave notice that they wished a hearing to be listed. As no such notification was received, (and having now satisfied myself that this case is indeed suitable for determination without a hearing), I have determined the matter on the basis of the submissions and documentary evidence provided by the parties.
5. I did not inspect the Property, but I gather that it comprises a newly-built three bedroom semi-detached house with a garden and driveway.

Law

6. A prerequisite for the forfeiture of a lease (otherwise than for a breach of a covenant to pay rent) is the service of a notice under section 146(1) of the Law of Property Act 1925. However, section 168(1) of the Commonhold and Leasehold Reform Act 2002 provides that a landlord

under a long lease of a dwelling may not serve such a notice unless section 168(2) of the 2002 Act is satisfied.

7. One of the ways in which section 168(2) may be satisfied is for it to be finally determined by the Tribunal (upon an application by the landlord under section 168(4)) that a breach of a covenant or condition in the lease has occurred.

The relevant covenant in the Lease

8. The Respondent is obliged to observe the covenants set out in Schedule 4 to the Lease. To the extent that they are relevant for present purposes, paragraphs 9.2 and 9.5 of Schedule 4 are set out below:

“9.2 Subject to paragraph 9.5 of this Schedule, not to underlet or part with possession of the whole of the Property.

...
9.5 Not following Final Staircasing to underlet the whole of the Property unless ...”

Evidence and submissions

9. The Applicant asserts that, between 15 June and 6 July 2023, it became aware that the Respondent had underlet the Property on two occasions, to different individuals. The first of these alleged underlettings had come to the Applicant’s notice following involvement by the police, who had arrested the occupant of the Property for drug-related offences and asked the Applicant to disconnect the utility supplies (I gather that the Property was being used to grow cannabis).
10. The Applicant’s Housing Manager then spoke to the Respondent by telephone. I gather that, during this conversation, the Respondent said that he was abroad and that he admitted underletting the Property.
11. On 5 July 2023, the Property was inspected by the Applicant’s Housing Manager. He discovered that the Property was being occupied by a new individual, who apparently confirmed that they were subletting the Property from the Respondent.
12. In response, the Respondent has admitted breaching the terms of the Lease by underletting the Property on the two occasions mentioned, although he notes that the two breaches were only ten days apart. The Respondent acknowledges that he does not reside at the Property and that he has never done so. He also confirms that he has never been named as the person responsible for council tax or utility bills in respect of the Property. However, he asserts that the Property is not presently sublet, but that it is occupied by his mother-in-law (who is apparently visiting from Pakistan until March 2024). The Respondent asserts that he intends to move into the Property in April. However, the Respondent also states that he intends to assign the Lease to his son, who will then reside at the Property exclusively.

Conclusion

13. I note that there is no disagreement about the fact that Final Staircasing has not yet occurred under the Lease. This is relevant because it means that the only provision of the Lease which is relevant in the circumstances of this case is paragraph 9.2 of Schedule 4. The position is straightforward: the Respondent must not underlet or part with possession of the whole of the Property.
14. I have no doubt that the Respondent has breached that provision on at least two occasions: indeed, he admits to doing so. The fact that the two breaches were separated by only a short period of time is immaterial to this finding: although the Respondent seems to suggest, by implication, that he had previously been unaware of the prohibition against underletting, this would seem surprising in the circumstances – a shared ownership lease, granted to the Respondent himself, relatively recently.
15. It is unnecessary for me to determine whether the current occupation of the Property by the Respondent's mother-in-law constitutes an additional breach of covenant. The Respondent says that the Property has not been underlet to his mother-in-law and the Applicant does not rely on it for the purposes of this application. Nevertheless, I observe that the history of this matter, the fact that the Respondent has never resided at the Property, and the fact that he is still not named as the person responsible for council tax or utility bills, would cause me to seriously doubt his assurance in this regard.
16. The Applicant is plainly entitled to the determination it seeks under section 168(4) of the 2002 Act.

Signed: J W Holbrook
Judge of the First-tier Tribunal
Date: 11 March 2024