



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

**Case reference** : **LON/00AW/LBC/2023/0068 &  
LON/00AW/LAC/2023/0021**

**Property** : **Flat 9, 13-15 Chesham Street, London  
SW1X 8ND**

**Applicant** : **13-15 Chesham Street RTM Company  
Limited**

**Representative** : **Ms Amanda Gourlay, counsel**

**Respondent** : **(1) Angelos Angelodemou  
(2) Georgina Dimas**

**Representative** : **Mr Paul de la Piquerie, counsel**

**Type of application** : **(i) Breach of lease -s.168(4) of the  
Commonhold and Leasehold Reform  
Act 2002  
(ii) Determination of a variable  
administration charge – Schedule 11 of  
the Commonhold and Leasehold  
Reform Act 2002**

**Tribunal members** : **Judge Tagliavini  
Mr Kevin Ridgeway MRICS**

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

**Date of hearing** : **15 April 2024**  
**Date of decision** : **12 June 2023**

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal finds the applicant has failed to prove the respondents have breached clause 2(14)(b) of the lease.
  - (2) The tribunal finds the applicant has proved the respondents have breached clauses 2(11) and 2(15) of the lease.
  - (3) The tribunal finds the respondents are not liable to pay the £570 fee for consideration of the retrospective application for consent to sub-let.
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## **The applications**

1. The applicant asks the tribunal to determine:

### **Under s.168(4) of the Commonhold and Leasehold Reform Act 2002 ('the Act')**

- (i) Whether the respondent lessees have breached the terms of the lease dated 4 April 2003 made between (1) Northumberland & Durham Property Trust Limited (2) Saqib Ahmed Mir;
- (ii) Whether the respondents have permitted or used the property other than for private residential use;
- (iii) Whether the respondents have permitted the property to be used for purposes that may become a nuisance.

### **Under Schedule 11 of the 2002 Act**

- (iv) Whether the respondents are liable to pay the £570 for the RTM Company's consideration of granting consent to sublet the subject flat to Mr Baghdadi.

## **The background**

2. The subject property at Flat 9, 13-15 Chesham Street, London SW1X 8ND ('the property') comprises a two-bedroom residential flat in a purpose built block of 13 flats. The applicant is a right to manage company which exercises the landlord's management functions under the lease.
3. The applicant asserted the respondents had sublet the Premises on an Assured Shorthold Tenancy dated 8 September 2022 to Mr Fardi

Baghdadi for a period of three years with effect from 14 September 2022. Subsequently, the applicant identified various alleged breaches of the lease that arose from this subletting.

## **The issues**

### **The applicant's case**

4. In its particularised statement of the breaches, the applicant alleged that the respondents had breached the following clauses of the lease:

**Clause 2(11)** - which provides that the Tenant must not without the previous written consent of the Landlord use the flat or any part thereof for any other purpose than that of a self-contained tenement as one flat for private residential purposes in single occupation only and must not exercise or carry on (or permit to be exercised or carried on) any trade, profession or business, and must not let apartments or rooms or take in any boarders or paying guests.

**Clause 2(14)(b)** - requires the Tenant not to assign, underlet or part with possession of the flat without the previous written consent of the Landlord.

**Clause 2(15)** requires the Tenant not to use or permit the flat to be used for any purpose that may be, become or cause a nuisance, damage, annoyance or inconvenience to the Landlord or the owners or occupiers of the other flats at the property.

5. The applicant asserted the respondents had breached the above clauses of the Lease in the following ways:-

- (a) In breach of clause 2(11) of the Lease, the respondents' subtenants have used the Premises without the prior written consent of the Landlord for purposes other than that of a self-contained tenement as one flat for private residential purposes in single occupation. The respondents have allowed their subtenants to exercise or carry on a trade, profession or business, by letting the Premises or rooms or, alternatively, by allowing their subtenant to take in boarders and paying guests.
- (b) In breach of clause 2(14)(b) of the Lease, the respondents have allowed their subtenants to underlet the Premises without the prior written consent of the Landlord.

- (c) In breach of clause 2(15) of the Lease, the respondents permitted their subtenants to use the Premises for purposes that have caused nuisance, damage, annoyance and inconvenience to the Landlord and the owners and occupiers of the other flats in the building.
6. The applicant asserted the respondents had permitted Mr Baghdadi to use the Premises for short term holiday lets (Airbnb) and that the numerous groups of international guests' arrival and departures often occurred at unsocial hours and caused a nuisance and annoyance to the other leaseholders in the Building and caused damage to the common parts.
7. The applicant relied upon the paragraph 11.199 of Volume 1 of Woodfall in submitting the word 'permit' in the lease had been broken by the respondents by their failure to take legal proceedings against Mr Baghdadi. A passage relied upon stated:
- But a tenant permits a breach of covenant if he abstains from taking legal proceedings against his under-tenant, when there could be no good defence to any such proceedings, it depends in the circumstances of each case whether a covenantor may reasonably be expected to take legal proceedings to order a stop of breach of covenant on the part of his sub-tenant.*
8. The applicant also asserted the respondents were liable to pay the £570 fee charged in respect of the fee for the RTM Company's consideration of whether to give consent to the sublet to Mr Baghdadi. This was said to be payable regardless of whether or not consent was granted.

### **The respondents' case**

#### **Alleged breach of clause 2(11)**

9. The respondents accepted they had sublet the property to Mr Baghdadi under an Assured Tenancy Agreement dated 8 September 2022 for a period of three years with effect from 14 September 2022.
10. The respondent asserted the applicant must establish not simply that Mr Baghdadi let the Premises on short-term lets for income, but that the Respondents permitted that, as per the wording of clause 2(11). It is not enough to simply state that the Premises have been occupied by people on short-term lets.
11. The applicant has failed to particularise how the Respondents are said to have permitted any such occupation, or when such breach occurred (the date is important because of the alleged waiver of the right to forfeit in any event). The respondents did not, in fact, permit any such occupation.

### **Alleged breach of clause 2(14)(b)**

12. The respondents submitted the applicant's reliance upon the allegation that 'The respondents have allowed their subtenants to underlet the Premises without the prior written consent of the Landlord' is presumably supposed to state that the fact relied upon is that the respondents have allowed their tenant (i.e. not subtenants) to let. There are no subsub-tenants of the Premises.
13. If that is right, then the allegation is wrong because clause 2(14)(b) is a qualified covenant by the respondent not to sub-let. It is not breached by the acts of any sub-tenant (i.e. any breach would be by the respondents letting to Mr Baghdadi, not by anything that Mr Baghdadi subsequently did).
14. Further, if, which is unclear, the applicant is claiming that the respondents breached clause 2(14)(b) of the Lease by granting a tenancy to Mr Baghdadi, then the Applicant has waived any such breach. By a letter dated 27 September 2022 from Urang Property Management ('Urang') acting for and on behalf of the Applicant and the Landlord to the respondents titled 'Application for Payment,' Urang demanded the sum £570 from the respondents for 'INV LR-0024 Sublet Registration'. The sum demanded under the Demand was demanded in exchange for the respondents being permitted by the Landlord and the applicant to let the Premises to Mr Baghdadi. The respondents paid the sum.
15. In any event, even if the respondents breached clause 2(14)(b) of the Lease and there was no collateral agreement/estoppel or waiver of breach as above, the applicant and the Landlord have waived the right to forfeit as the attempts by the respondents to assign the term of years under the Lease, constituted a waiver by the applicant and the Landlord, of the right to forfeit upon any breach of clause 2(14)(b) as alleged. Those negotiations were consistent, and only consistent, with the applicant and the Landlord having elected to treat the Lease as continuing after, apparently, the discovery of the fact complained of on, at the latest, 27 September 2022 as per the Demand above. Those negotiations also constituted the communication by the applicant and the Landlord of their decision to treat the Lease as continuing. Otherwise, there would have been nothing to discuss the assignment of.

### **Allegation of breach of clause 2(15)**

16. The respondents asserted the applicant and the Landlord appear to proceed on the basis that it is enough to establish '*That the occupiers of the Premises have caused nuisance, damage, annoyance or inconvenience ...to the Landlord and the owners or occupiers of the other flats in the building.*' However, that assertion is incorrect as the lease provides the applicant and the Landlord have to establish that the respondents have a) permitted b) the Premises:-

*To be used for any purpose which in the reasonable judgment of the Landlord.....may be or tend or grow to be a nuisance damage annoyance or inconvenience to the...Landlord or the owner or occupier of any part of the Building.*

17. The respondents initially contended the £570 fee for consent to the subletting to Mr Baghdadi had been paid by them to the applicant. Since the hearing, the respondent has considered (with the express permission of the tribunal) and subsequently accepted, (email dated 25 April 2024), that the sum of £570 was paid in respect of the consent to sublet to a previous subtenant, Ms Julie Krol and not the current subtenant Mr Fadi Abdelkader Baghdadi as detailed in the applicant's witness statement provided by Ceranne Hitchins dated 22 April 2024. Consequently, the tribunal finds the respondents' assertions of a waiver of the right to forfeit the lease cannot be relied upon.

### **The hearing**

18. An oral hearing was held at which the tribunal considered all of the oral and documentary evidence relied upon by the parties.
19. Since the hearing, the respondent has considered (at the express request of the tribunal) and subsequently accepted (email dated 25 April 2024), that the sum of £570 was paid in respect of the previous consent to sublet to a previous subtenant, Ms Julie Krol and not the current subtenant Mr Fadi Abdelkader Baghdadi as detailed in the witness statement of Ceranne Hitchins dated 22 April 2024. Consequently, the tribunal finds the respondents' assertions of a waiver of the right to forfeit the lease cannot be relied upon.

### **The tribunal's decision**

20. The tribunal finds the applicant has failed to prove a breach of clause 2(14)(b). However, the tribunal finds the applicant has proved the respondents breached clauses 2(11) and 2(15) of the lease.
21. The tribunal finds the applicant failed to notify the landlord of the respondents subletting of the property to Mr Baghdadi pursuant to the provisions of s. 98(4) of the 2002 Act and took it upon itself to refuse retrospective consent on 5 December 2022. The tribunal finds in the circumstances the fee of £570 is not reasonable nor payable by the respondents.

### **Reasons for the tribunal's decision**

22. In reaching its decision, the tribunal considered the judgment in *Arnold v Britton* [2015] UKSC 36 and the principles to be applied when considering the interpretation of the words of the lease.

23. The tribunal finds the applicant's particularised alleged breach of clause 2(14)(b) of the lease, do not seek to rely upon the subletting by the respondents to Mr Baghdadi but the subletting by him, to other short let occupiers. However clause 2(14)(b) of the lease states the Tenant covenants:-

*Not to assign underlet or part with possess of the said flat without the previous consent in writing of the Landlord (the tenant paying all costs and expenses of or in connection with the obtaining of such consent) .....*

24. The tribunal finds the applicant has proved the respondents have breached clause 2(11) which states:-

*Not at any time during the said term without the previous consent in writing of the landlord to use the said flat or any part thereof not permit the same to be used by any other person for any other purpose than that of a self-contained tenement for occupation as one flat for private residential purpose in single occupation only and not to exercise or carry on or permit to be exercised or carried on upon the said flat any trade profession or business nor to advertise the Building as the business address of the Tenant and not to let apartments or rooms or take in any boarders or paying guests.*

25. The tribunal finds the respondents were initially unaware of Mr Baghdadi's intention to use the premises for holiday lets. However, the tribunal finds the respondents knew no later than 9 October 2022 their subtenant Mr Baghdadi, was using the premises for short-term holiday lets and the complaints being made about the use of the premises in this manner.

26. The tribunal finds the respondents permitted Mr Baghdadi to carry out a business at the premises and allowed him to take in paying guests rather than occupying the property himself in accordance with clause 6.4.1 of the AST which states:

*To use the Property only as a private dwelling house for the occupation of the Tenant /Tenants nominated occupant as listed on this tenancy agreement only and not to use the Property or any part for any illegal or immoral purpose nor for any sale by auction nor any public meeting for religious political or other purposes and not to carry out any profession trade or business or register a business at the Property.*

27. The tribunal accepts the evidence of the use of the premises as holiday lets, the nuisance and damage caused in the unchallenged factual evidence provided in the two witness statements of Vyvyan Lyle, director

of the applicant RTM Company, dated 14 December 2023 and 22 March 2024.

28. The tribunal does not accept the respondents' submission that the applicant has failed to establish the respondents permitted the use of the premises as a holiday let. The tribunal finds the respondents took no steps to apply for an injunction and failed to initiate possession proceedings where it was likely to be established that Mr Baghdadi did not occupy the premises and had used them for the business of holiday lets. Therefore the tribunal finds the respondents are in breach of clause 2(11) of the lease.

29. Clause 2(15) of the lease states the Tenant is:-

*Not to use or permit to be used the said flat or any part thereof for any illegal or immoral purpose or for any purpose which in the reasonable judgment of the Landlord or of the superior Lessors may or tend or grow to be a nuisance damage annoyance or inconvenience to the Superior Lessors or to the landlord or the owner or occupier of any part of the Building.....*

30. The tribunal finds the acts alleged to amount to a '....nuisance, damage, annoyance or inconvenience' were set out in the First and Second witness statements of Vyvyan Lee. These were said to be caused by the persons arriving on different holiday lettings, do collectively amount to a nuisance and annoyance and did cause damage to the common parts of the Building. The tribunal finds the respondents knew of the short term holiday lettings and the nuisance annoyance and damage that occurred and permitted to take place as they failed to take any steps at all to put an end to it.

31. The respondent wished the tribunal to determine whether or not the applicant should pay the costs of two applications (service charges and administration fees) that were subsequently withdrawn under rule 22 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) rules 2013. The applicant objected to such a determination being made.

32. The tribunal declined to make a decision on rule 13 costs as the respondent had failed to make a proper written application for costs; had failed to provide a Schedule of Costs for applications that did not form part of the current application.

33. In conclusion, the tribunal finds the applicant has proved the respondent has breached clause 2(11) and 2(15) of the lease. The administration fee of £570 is not payable by the respondents.



**Name:** Judge Tagliavini

**Date:** 12 June 2024

### **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).