



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

Case Reference : **LON/00AY/LBC/2023/0037**

Property : **Third Floor Flat, 81 Brixton Hill,
London, SW2 1JE**

Applicant : **Oriel Investments (UK) Limited**

Respondent : **Fraser Oswald Holdings Limited**

Type of Application : **Application for a determination of
breach**

Tribunal Members : **Judge Shepherd**
Fiona Macleod MCIEH

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

Date of Decision : **27 September 2024**

DECISION

(C) CROWN COPYRIGHT

1. The Applicants, Oriel Investments (UK) Limited (“The Applicants”) are seeking a determination under Section 168(4) of Commonhold and Leasehold Reform Act 2002 to the effect that the Respondent, Fraser Oswald Holdings Limited (“The Respondent”) is in breach of their lease. The Applicant is the freeholder of the lease and the Respondent is the leaseholder under the lease. Ms Fraser is the Respondent’s representative. The alleged breaches arise out of the short letting of the Property ("the Airbnb Breaches") and unauthorised alterations ("the Alteration Breaches").

2. The Applicants are the freeholders of 81 Brixton Hill, London, SW2 1JE (“The premises”). The premises constitute a flat within 81 Brixton Hill of which the Respondent is the registered leaseholder.

The Breaches

3. The Applicants rely on the following clauses in the Lease:

"Clause 4 *THE Lessee HEREBY COVENANTS with the Lessors as follows.*

f. within four weeks after any transfer assignment sub-letting charging or parting with possession or devolution of the Flat to give notice in writing of such and of the name and address and description of the assignee sub-lessee or person upon whom the relevant term or any part thereof may have devolved and to deliver to the Lessors or their Solicitors within such time as aforesaid a verified copy of every instrument effecting or evidencing the same and to pay to the Lessors a reasonable fee plus Value Added Tax for the registration of every such notice."

4. Clause 4 also states that the lessee is :

Not to make any structural alterations or additions to the flat nor to injure any of the walls or timbers therefor nor to remove the landlords fixtures and fittings without the previous consent in writing of the lessors.

5. The First Schedule of the lease provides:

"1. The Lessee shall not use the Flat nor permit the same to be used for any purpose whatsoever other than as a private dwelling house or for any purpose from which a nuisance can arise to the owners and occupiers of the other flats in the Building or the downstairs occupiers or for any illegal or immoral purpose"

6. The Applicants allege the Respondent has breached these provisions as follows:

- a) sub-letting the premises for short lets in breach of Para 1 of the First Schedule;

- b) sub-letting the Property for short lets causing a nuisance to other owners/occupiers in the Building, again in breach of Para 1 of the First Schedule; and
- c) Failing to deliver notice of each sub-letting to the Applicant as required by Clause 4 f of the Lease.
- d) Carrying out unauthorised works in breach of clause 4 c of the lease.

The inspection

7. The Tribunal inspected the premises on 15th December 2023 and were invited into an open plan kitchen/living area that had been created by the removal of an internal wall. New PVCu windows had been fitted to the front of the building including a double PVCu doorway that provided access outside to the parapet guttering on which decking had been laid to form an outside seating area. The Tribunal went outside onto the narrow decking area and noted that the guard rail was inadequate and the decking supports may impede proper drainage of the gutter. The hearing was due to take place on the same day but the Respondent didn't arrive at the Tribunal until around 3.30 pm so it had to be adjourned. There then followed some delay as the Tribunal sought to arrange a re-hearing. The Respondent tried to adjourn the rearranged hearing citing various matters including her relative's health and issues with her sons. She provided no evidence of the former and the latter did not justify her non - attendance. The Tribunal considered that the Applicants had waited long enough and the hearing went ahead on 23rd July 2024.

The hearing

8. James Davies of Counsel represented the Applicants. The Respondent didn't attend as explained above. Mr Davies detailed the alleged breaches and went through the lease clauses. He said the continued use of the premises for short lets was causing a nuisance to other residents. He took the Tribunal to the listings on Airbnb. He said the evidence showed the Airbnb lettings had continued and any suggestion by the Respondent of a letting to a tenant by an assured shorthold tenancy appeared contrived. Mr Tibor Fisher who lived below the premises had suffered disturbance in the early hours of the morning. Mr Davies took the Tribunal to the emails from Mr Fisher which were contemporaneous. There were up to six people staying in the premises at one time.

9. Catherine Jose, the Applicant's property manager gave evidence. Complaints about noise by guests had began in March 2023. There were further complaints about noise during the alteration works. It was discovered that the property was being advertised on Airbnb.

10. Mr Davies said that there were also unauthorised alterations. New windows had been installed in the mansard roof. An internal wall had been removed. The window had been converted into a door - way. The guttering had been altered. This was a trespass because the guttering was not in the demise. There was no suggestion that permission had been sought for the alterations. Mr Young of Geoff Beardsly and Partners had provided an expert report dated 10th July 2023 detailing the unauthorised work.

11. Ms Ballast gave evidence. She was a Detective Constable in the Metropolitan Police. She lived with her mother in a neighbouring flat. She had seen reviews of the premises in the Airbnb app. It was clear it was still being used for this purpose. This was causing a nuisance. A family of five had arrived but could not get into the premises. A review had complained that the Respondent had told the person to leave. People were running up and down the stairs, making noise in the early hours, drinking etc.

12. The Respondent sent an email to the Tribunal and Applicant on 24th November 2023. She said that other neighbours had carried out similar work to the work she had done at the premises. In relation to the use of the premises for short term lets she admitted that the premises had been put to this use in the past but currently the premises were let out on a long term assured shorthold tenancy.

13. Ms Jose in response to the email said that the flats with similar works were in a different block and in any event the Respondent had not sought or obtained permission. Moreover, the Respondent had not provided notice of the AST sublet which was a breach of clause 3.4 (1) of the lease.

Determination

14. We make the following findings on a balance of probabilities.

15. The Respondent is in breach of her lease:

- a) She has used the premises for a purpose other than as a private dwelling house. Namely she has used it for short lettings on the Airbnb site. This has caused a nuisance to other occupiers. In fact, we consider it's been a serious nuisance which would constitute a nuisance at common law. It is established that this sort of short - term letting could not be described as a dwelling house – see *Nemcova v Fairfield Rents Ltd* [2017] L & TR 10 and *Caradon DC v Paton* [2000] 3 EGLR 57. (Breach of para 1 of the First Schedule of the lease)
- b) If it is the case that the Respondent has let the premises on an AST which is not supported by the continued advertising of the premises on the Airbnb site she has failed to give proper notice to the Applicants of this which is also a breach of the lease. (Breach of clause 3.4(1)).
- c) The Respondent has also carried out unauthorised structural works at the premises (Clause 4(c) of the lease).

Judge Shepherd

27th September 2024

RIGHTS OF APPEAL

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