FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00EY/LBC/2024/0012**
Premises	**:**	**1A Harcourt Road, Blackpool, FY4 3ET**
Applicant	**:**	**ND Developments Limited**
Representative	**:**	**Paul Whatley, Counsel instructed by Ormrods Solicitors & Advocates**
Respondent	**:**	**Sebs Properties Limited**
Type of Application	**:**	**under s.168(4) of the Commonhold & Leasehold Reform Act 2002 for an order that a breach of covenant has occurred**
Tribunal Member	**:**	**Judge P Forster** **Mr I James MRCS**

DECISION

Decision

The Tribunal determines that for the purposes of s.168(4) of the Commonhold and Leasehold Reform Act 2002, the Respondent has breached clause 1(a) of the terms of its lease by using the Premises or permitting it to be used for purposes other than a residential flat.

Introduction

1. This is an application under s.168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") for the Tribunal to determine whether there has been a breach of covenant.

2. The Applicant is ND Developments Ltd., the freehold owner of 1A Harcourt Road, Blackpool, FY4 3ET ("the Premises"). On 12 April 2024, the Applicant purchased the freehold of 1 and 1A Harcourt Road, Blackpool and 112A, 112B, 112C and 112D St Annes Road, Blackpool registered at HM Land Registry under title number LA465049.

3. The application is in respect of the Premises which is a two-storey flat above a ground floor commercial unit.

4. The Respondent is Sebs Properties Ltd., the leasehold owner of the Premises registered at HM land Registry under title number LA505891. The Respondent purchased the leasehold interest on 22 October 2021.

5. By a lease dated 19 October 1984 ("the Lease") made between Brian Chidlaw and Alicia Mary Chidlaw as Lessor and Raymond Vaughan Mann as Lessee the Property was let for a term of 999 from 19 October 1984 upon the terms and conditions therein. The Applicant and the Respondent are the successors in title to the original parties.

6. Under clause 1(a) of the Lease the Lessee covenants with the Lessor "*not to use the demised premises nor permit the same to be used for any purpose whatsoever other than as a residential flat…*".

7. The Tribunal issued directions on 15 August 2024 that required the Applicant within 14 days to provide a bundle of documents to include a statement of case, a copy of the lease, any legal submissions and copies of all documents the Appellant intends to rely on at the hearing. Within 21 days of receipt of the Applicant's bundle of documents, the Respondent was required to provide a bundle of documents to include a statement in response setting out the full grounds for opposing the application and copies of all documents the Respondent intends to rely on.

8. The application was heard by video on 9 October 2024. The Applicant was represented by Mr Paul Whatley, Counsel. The Respondent was represented by its sole director, Sebastian Wozynski. The Tribunal heard evidence from Nathan Williams, a director of the Applicant and from Mr Wozynski.

The Applicant's case

9. On 23 May 2024, the Applicant discovered that the Premises was being used for the purposes of growing cannabis. The Applicant says this constitutes a breach of clause 1(a) of the Lease because the Premises was being used for an illegal business purpose which is a purpose other than "as a residential flat".

The Respondents' case

10. On 25 September 2024, Mr Wozynski sent an email in response to the Tribunal's directions. His focus was on any potential financial claim but he also states:

"*as the landlord, I entered into a legally binding residential lease agreement with the tenant who was residing at the property… the lease is duly signed by both parties, and I fulfilled all obligations as a landlord under the terms of the agreement. If the property has been used for any illegal purposes, I was not made aware of such activities, nor did I sanction or direct any illegal use of the property. The actions of the tenant, in this case, were entirely outside of my control or knowledge".*

The law

11. S.168 of the Act provides that:

(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 (c. 20) (restriction on forfeiture) 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.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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.

12. An application under s.168(4) is a precursor to the service of a s.146(1) notice under the Law of Property Act 1925 leading to forfeiture of the Lease. In such a situation the Respondent is able to apply to the courts for relief from forfeiture.

13. In approaching this application, the Tribunal has regard to guidance provided by Marchitelli v 15 Westgate Terrace Ltd [2020] UKUT 192 (LC): "*The purpose of proceedings under s.168(4) of the 2002 Act, is to establish the facts on which steps to forfeit an extremely valuable lease will then be founded. Before forfeiture proceedings may be commenced the landlord is required by s.146(1) of the 1925 Act, to serve a notice "specifying the particular breach complained of" and if that breach is remedied and compensation is paid no forfeiture will occur. Before a s.146(3) notice may be served the FTT must determine that "the breach" has occurred (s.186(2)(a) of the 2002 Act). It follows, therefore, that the determination required of the FTT must be sufficiently specific to provide the basis of a s.146 notice*".

The decision

14. The Tribunal did not inspect the Premises but had the benefit of an extensive set of photographs showing the interior of the flat. These show that the Premises have been converted into a specialised cannabis growing unit with modifications in respect of lighting, heating and ventilation. Walls have been removed and the Premises are not fit for residential use.

15. It is not in dispute that the Premises have been used to grow cannabis on a commercial scale.

16. The Tribunal is asked to determine whether the Respondent has breached clause 1(a) of the Lease.

17. The first step is to construe the meaning of the clause. The basic principles of construction are summarised by Lord Neuberger in Arnold v Britton [2015] UKSC 36 at paragraph 15:

"When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language the contract to mean", to quote Lord Hoffman in Chartbrook Ltd v Persimmon Homes Ltd [2009] AC 1101 at

14. And it does so by focussing on the meaning of the relevant words....in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

18. For the purpose of the present application, the relevant words in the clause are *"not to use the demised premises nor permit the same to be used for any purpose whatsoever other than as a residential flat flat…"*.

19. In the context of a residential building that comprises flats let on standard terms an intention to restrict the use of the property to use as a residential flat is neither improbable nor surprising. Considerations of estate management and good housekeeping provided a rational explanation why parties to such a lease might regard it as mutually beneficial to restrict the use to a residential flat.

20. The natural and ordinary meaning of the covenant is its literal meaning, namely that the use of the flat should be limited to use as a residential dwelling. Not to read the covenant in such a way would undermine its purpose. To allow the exploitation of the Premises by using it to grow cannabis on a commercial scale would strip the critical words from the covenant and reverse its clear intention.

21. The Respondent claims that it was not aware of the way in which the Premises was being used as a growing farm for cannabis and that its obligation to abide by the covenants in the Lease was in some way abrogated.

22. Although it is not suggested that the Respondent or indeed Mr Wozynski has been involved in criminal activity, the Applicant submits that the Respondent has permitted the Premises to used for purposes other than a residential flat.

23. The Tribunal heard from Mr Wozynski that the Respondent purchased the Premises in 2021 and that since then it has been let to tenants most recently to David Milcarz. Mr Wozynski was vague about the details but said that Mr Milcarz paid rent of £800 per month to his wife in Poland. Mr Wozynski did not make any distinction between himself and the Respondent and he did not seem to appreciate that the rent is payable to the Respondent and not his wife.

24. The Tribunal only has Mr Wozynski's word that the Premises was let to Mr Milcarz. The Respondent has not provided a copy of the agreement or any other documents to evidence the tenancy.

25. Mr Williams gave evidence about a car that was seen outside the Premises. Enquiries made by the Police established that the vehicle was registered in Mr

Wozynski's name. Mr Wozynski runs a business buying and selling cars. He claimed that he had sold the car to Mr Milcarz. Mr Wozynski claimed that the vehicle could not have been registered in his name because the person he had bought it from had not given him the logbook. He accepted that the vehicle was on his motor trade insurance policy. Mr Wozynski's evidence on the point cannot be relied on because as the Police discovered the car is registered in his name and is on his insurance. Mr Wozynski's evidence about the car undermines his overall credibility. He accepted the suggestion that he took an informal approach to his business affairs.

26. Mr Wozynski was asked how often he visited the Premises to carry out inspections. His response was vague and lacked detail. Mr Wozynski does not keep any records and he deferred to his wife who he claims deals with the Premises. He said that he was aware of a landlords' responsibilities but seemed satisfied about Mr Milcarz's conduct of the tenancy because the rent was being paid. Mr Wozynski said that he may have been to the Premises at the end of 2023 but he could not be certain.

27. The Tribunal is not satisfied that the Premises was let to Mr Milcarz as claimed. Mr Wozynski's evidence is unreliable and there are no documents to support the claim about a tenancy.

28. The Tribunal finds that the Premises was not being used as a residential flat. The Premises was under the Respondent's control and it was responsible for how it was being used, either directly or indirectly. The Respondent is liable under the terms of the Lease and cannot pass on responsibility for any breach to any subtenant.

29. On the facts of this case, the Tribunal finds that the Premises is not being used for residential purposes and the Respondent is therefore in breach of clause 1(a) by using the Premises or permitting it to be used for purposes other than a residential flat.

30. For the reasons given, the application is allowed.

9 October 2024

RIGHT OF APPEAL

A person wishing to appeal against this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

If the person wishing to appeal does not comply with the 28-day time limit, that person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.