



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

Case Reference : **MAN/00EY/LBC/2023/0008**

Property : **Flat N, The Chimes, 1a Forest Gate,
Blackpool FY3 9AR**

Applicant : **The Chimes (Blackpool) Limited**

Respondent : **Keigan Parker**

**Type of
Application** : **Section 168(4) - Commonhold & Leasehold
Reform Act 2002**

**Tribunal
Members** : **Tribunal Judge C. Wood
Tribunal Member I. James**

Date of Decision : **16 January 2024**

DECISION

ORDER

1. The Tribunal determines that a breach of the covenants in clauses 3(15) and 3(22) of the underlease dated 12 July 2004 made between The Chimes (Blackpool) Limited (1), Newfield Construction Limited (2) and Nikki Greco (3), (“the Lease”), has occurred.

BACKGROUND

2. By an application dated 25 May 2023, (“the Application”), the Applicant sought a determination from the Tribunal pursuant to section 168(4) of the Commonhold & Leasehold Reform Act 2002, (“CLARA”), that a breach of the covenants in clause 3(15) and 3(22) of the Lease has occurred.
3. Directions dated 14 September 2023 were issued by the Tribunal pursuant to which both parties made written submissions to the Tribunal.
4. The Directions stated that the Tribunal considered the Application was appropriate for a paper determination, in the absence of a request for a hearing from either of the parties.
5. No request for a hearing was received from either of the parties and the Application was scheduled for determination on 16 November 2023.

LAW

6. Section 168 of CLARA provides 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 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 a breach has occurred.

- (3)
 - (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 covenant or condition in the lease has occurred.
 - (5) But a landlord may not make an application under subsection (4) in respect of a matter which-
 - (a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (b) has been the subject of a determination by a court, or
 - (c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
7. The meaning of a “long lease” for these purposes is as set out in sections 76 and 77 of CLARA.
8. The Tribunal is an “appropriate tribunal” for these purposes.

EVIDENCE

The Applicant’s Submissions

9. The Applicant’s written submissions are summarised as follows:
- 9.1 in the Application, the Applicant refers to the following:
- (1) an email dated 19 May 2023 from the owner of another flat in the block known as The Chimes, (“the Block”), referring to “an unacceptable situation” in the entrance hall as a result of the Property being rented as an Airbnb property;
 - (2) a “dummy” reservation made on behalf of the Applicant on 11 January 2023 for a short stay at the Property from 22 – 25 September 2023;
 - (3) an email dated 20 September 2022 from the insurance brokers used to effect insurance in respect of the Block confirming that the use of any apartments within the Block for Airbnb purposes would render void the insurance on the Block;
- 9.2 in the Statement of Case dated 22 September 2023 made by Michael Willson White on behalf of the Applicant communications between the Respondent and Mr White are summarised in which the issues regarding

the occupancy of the Property and possible breaches of the covenants in the Lease are raised;

- 9.3 copies of an exchange of emails between the Respondent and Mr White in October 2023 in which Mr White challenges the Respondent's claim that the Property is now let on an assured shorthold tenancy, ("AST"), in compliance with the terms of the Lease as a result of the Respondent's failure to provide a copy of the AST agreement signed by the tenants.
- 10. The Applicant submits that the evidence supports its claim that the Respondent has breached clauses 3(15) and 3(22) of the Lease which provide as follows:
 - 10.1 Clause 3(15): To use and occupy the demised premises as a private dwelling in the occupation of one family only and for no other purpose.
 - 10.2 Clause 3(22): Not to do or permit or suffer to be done on the demised premises or any part thereof any act or thing which would render void or voidable any policy of insurance thereon...
- 11. The Applicant therefore seeks a declaration in accordance with section 168(4) of CLARA that a breach of the covenants in clauses 3(15) and (22) of the Lease has occurred.

The Respondent's Submissions

- 12. The Respondent's submissions comprise a series of emails of various dates in October 2023 to and/or copied to Mr White and the Tribunal as follows:
 - 12.1 email dated 17 October 2023 attaching a photograph of a tenancy agreement with certain details completed regarding start date, term, rent payable;
 - 12.2 email dated 23 October 2023 in which the Respondent states: "I have confirmed the apartment is no longer getting used as an air b and b and half [sic] also sent you details of the tenants";
 - 12.3 email dated 24 October 2023 to the Tribunal providing names and contact telephone numbers for the tenants of the Property;

- 12.4 email dated 25 October 2023 to Mr White attaching a further photograph of the tenancy agreement showing the names of the tenants.

REASONS

13. The Tribunal notes that the Lease comprises “a long lease of a dwelling” for these purposes.
14. The Tribunal notes as follows:
- 14.1 the Applicant has failed to produce documentation in support of its statements in the Application referred to in paragraph 9.1(1) and (2) above;
- 14.2 the Applicant’s suggestion that, if satisfied that the Property is now let on an AST in accordance with the terms of the Lease, it may have been persuaded to withdraw the Application;
- 14.3 the Respondent’s statement in the email dated 23 October 2023, (see paragraph 12.2 above), is an acknowledgment by him that the Property has been used for short lets in the past;
- 14.4 it is unconvinced as to the validity of the tenancy agreement, photographs of which are attached to the Respondent’s emails dated 17 and 25 October 2023. In particular:
- (1) the Tribunal considers that it is significant that the Respondent has failed to produce a copy of this tenancy agreement signed by the named tenants; and
- (2) that the photograph attached to the email dated 25 October 2023 appears to show a copy of the tenancy agreement with the names of the tenants subsequently inserted by the Respondent.
15. The Tribunal is satisfied as follows:
- 15.1 that the use of the Property for short-term lets is a breach of clause 3(15) of the Lease; and,
- 15.2 that the Applicant has established that the use of the Property for short-term lets would render void and/or voidable the insurance on the Block in breach of clause 3(22);
- 15.3 that the Respondent’s acknowledgement that the Property has been used for such short-term lets in the past is an admission of a breach of clause 3(15) of the Lease within section 168(2)(b) of CLARA;

- 15.4 that the evidence of an AST having been granted in respect of the Property in or about October 2023 is unpersuasive.
16. In accordance with section 168(4) of CLARA, the Tribunal determines that a breach of clauses 3(15) and (22) of the Lease has occurred.