



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

Case Reference : **MAN/00EY/LBC/2023/0003**

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

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

Respondent : **Arron Long**

**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 16 July 2004 made between The Chimes (Blackpool) Limited (1), Newfield Construction Limited (2) and Martin & Margaret Gregory (3), (“the Lease”), has occurred.

BACKGROUND

2. By an application dated 1 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 the Applicant 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) correspondence with the Respondent in respect of the Property being rented as an Airbnb property;
 - (2) a “dummy” reservation made on behalf of the Applicant for a short stay at the Property from 29 September – 1 October 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; and,
 - 9.2 in paragraph 10 of the Statement of Case dated 21 September 2023 made by Michael Willson White on behalf of the Applicant he refers to four oral complaints made by other occupiers of the Block about the use of the Property for short lets on Airbnb;

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. By an email dated 15 November 2023, the Respondent contacted the Tribunal requesting an adjournment of the determination of the Application on the ground that he had not received any of the correspondence relating to the Tribunal, and that the email address provided for him by the Applicant in the Application was incorrect.
13. In an email dated 16 November 2023 from the Respondent, he stated as follows:
 - 13.1 he did occasionally empty the mailbox for the Property at the Block but that he had not received any correspondence relating to the proceedings; and,
 - 13.2 he concluded, "In the interest of saving time and money, I am more than happy to stop using the apartment as an Airbnb from January 1st 2024".
14. In a further email dated 21 November 2023, the Respondent denied that he had made an "explicit admission" that he was using the Property for short-lets and referred to the extended stay option for lets of 6-12 months on Airbnb.

REASONS

Adjournment Request

13. The Tribunal notes as follows:

- 13.1 it was confirmed that there had been no “bouncebacks” of any email correspondence relating to the proceedings sent by the Tribunal to the email address provided by the Applicant for the Respondent;
- 13.2 despite the Respondent’s acknowledgment that he “occasionally” emptied the mailbox at the Property, he provided no explanation as to why none of the correspondence relating to the proceedings sent to that address between May – October 2023 had not been received by him;
- 13.3 the Respondent could provide no explanation as to how he had become aware of the paper determination of the Application scheduled for 16 November 2023.
- 14. Having regard to the above, the Tribunal was not satisfied that the Respondent had established any ground for an adjournment of the Tribunal’s determination of the Application on 16 November 2023.
- 15. Notwithstanding the Tribunal’s determination, the Respondent submitted further emails to the Tribunal, as detailed in paragraphs 13 and 14 above.

16. Breach of covenant

- 17. The Tribunal notes that the Lease comprises “a long lease of a dwelling” for these purposes.
- 18. The Tribunal is satisfied that there is evidence of the use of the Property for short-lets by the Respondent. In particular:
 - 18.1 the evidence of the “dummy” reservation of the Property made by the Applicant on Airbnb also includes reviews showing the repeated use of the Property for this purpose;
 - 18.2 the Respondent’s claim that there is no breach of clause 3(15) of the Lease because there is an option for extended stays is not supported by any evidence that the Respondent has let the Property on such terms.
- 19. The Tribunal is further satisfied that:
 - 19.1 the use of the Property for short-term lets is a breach of clause 3(15) of the Lease;
 - 19.2 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); and,

- 19.3 the Respondent's statement that he will cease using the Property "...as an Airbnb from January 1st 2024" is an admission of an ongoing breach of clause 3(15) of the Lease as at the date of the Tribunal's determination.
20. 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.