

504

**H M COURTS & TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
CASE NO. CHI/40UD/LBC/2012/OO34**

**RE: PREMISES 15 ASH GROVE, GLYNSWOOD, CHARD, SOMERSET,
TA20 1BZ**

BETWEEN:

SYCAMORE COURT MANAGEMENT (CHARD) LTD

"THE APPLICANT"

&

MR DAVID LATHOM

"THE RESPONDENT"

**IN THE MATTER OF AN APPLICATION UNDER SECTION 168(4) OF THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

DECISION

TRIBUNAL MEMBERS;

MR A D McC GREGG (LAWYER/CHAIRMAN)

MR M J AYRES FRICS (VALUER/MEMBER)

MR S FITTON (LAY MEMBER)

DATE OF APPLICATION: 30 NOVEMBER 2012

DATE OF DIRECTIONS: 6 DECEMBER 2012

DATE OF INSPECTION: 13 MARCH 2013

AND HEARING: 13 MARCH 2013

PERSONS PRESENT AT THE HEARING:

FOR THE APPLICANT

MR MARK JENKINS (COUNSEL)

MR LUKE AUSTIN (CLARK WILLMOTT)

MR MORRIS POTTER (SECRETARY OF SYCAMORE COURT MANAGEMENT (CHARD) LTD)

MRS JENNY POTTER

MRS SYLVIA HAINES

FOR THE RESPONDENT

MR DAVID LATHOM

MRS DIANA PARSLEY

1 The Application

- 1.1 This is an application pursuant to Section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination as to whether a breach or breaches of covenant have occurred.
- 1.2 In 1995 the Applicant became the Landlord of the property in question namely 15 Ashgrove, Glynswood, Chard, Somerset, TA20 1BZ.
- 1.3 On 24 February 2012 the Respondent, David George Lathom purchased the long leasehold interest in the property.
- 1.4 The Freehold Title to the property is registered under Title No. ST28672 and confirms that the Applicant is the freehold owner.
- 1.5 The long leasehold title to the property is registered under Title No. ST69307 and contains covenants which are the subject of this application.

2 Inspection of Premises

- 2.1 The Tribunal endeavoured to inspect the premises on 13 March 2013 and prior to the hearing of the application. However, access was denied by the Respondent and an external inspection was therefore only possible.
- 2.2 The Tribunal were however told that 15 Ash Grove is one of 8 flats in a block which were originally constructed as shops on the ground floor and with upstairs accommodation.
- 2.3 The Tribunal were also told that a number of the shop units and the accommodation were subsequently converted into 8 separate flats in the late 1980's.
- 2.4 From a set of sale particulars in the Tribunal's bundle of papers the property was described as "of brick elevation under a tiled roof and the

accommodation comprises an entrance hall, a living dining room, a kitchen, two bedrooms and a bathroom. The property has gas central heating and UPVC double glazing. There is a storm canopy over the front door leading to a communal staircase shared between two flats. There is a dedicated parking space on a hard standing area adjacent to the property."

3 The Parties

- 3.1 The Applicant is the Landlord and freehold owner of No. 15 Ash Grove, Glynswood, Chard, Somerset, TA20 1BZ and holds the reversion immediately expectant upon the expiry of the Respondent's Lease.
- 3.2 The Respondent is the long leaseholder of the premises, 15 Ash Grove, Glynswood, Chard, Somerset, TA20 1BZ having purchased the leasehold interest on 24 February 2012.
- 3.3 The Respondent's title is derived from a lease between M J Jeans (West County) Ltd and Harold Harris and Glynis Harris dated 27 June 1990 for a term of 999 years from the first day of January 1979.

4 The Lease

- 4.1 The original Lease is dated 27 June 1990 and is for a period of 999 years.
- 4.2 The Lease contains restrictive covenants, a number of which the Applicant, in their application alleged have been breached.
- 4.3 In particular, clause 3(i) states:

"not at any time during the term divide the possession of the demised premises by an assignment or underletting or parting with possession of part only and not during the last 7 years of the term without the previous consent in writing of the Landlord (such consent not to be unreasonably withheld, assign, underlet or part with the possession of the demised premises."

- 4.4 Paragraph 4 of Schedule 4 of the Lease states as follows:

"not to use the demised premises or permit the same to be used for any other purpose than a private dwelling with car parking space for the use and occupation of one family only."

- 4.5 Paragraph 13 of Schedule 4 of the Lease states as follows:

"not to obstruct the shared access."

- 4.6 Paragraph 3 of Schedule 4 of the Lease states as follows:

"no musical instrument, television, radio, loudspeaker or mechanical or other noise making instrument of any kind shall be played or used nor shall any singing be practiced in the flat so as to cause annoyance to the owners, lessees and occupiers of any of the other flats comprised in the estate or so as to be audible outside the flat between the hours of 11pm and 7am."

5 The Law

5.1 The Commonhold and Leasehold Reform Act 2002 section 168 states:

- 1(a) A Landlord under a long lease of a dwelling may not serve a notice under 146(1) of the Law of Property Act 1925 (c20) (restriction on forfeiture) in respect of a breach by any tenant of a covenant or condition in the Lease unless (2) is satisfied:
- (2) The subsection is satisfied if:
 - a) It has been finally determined on an application under sub section 4 that the breach has occurred.
 - b) The Tenant has admitted the breach; or
 - c) A court in any proceedings or any arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that a breach has occurred.
- (3) But a notice may not be served by a virtue of sub section (2)(a) until after the end of the period of 14 days beginning with the day after that which the final determination is made.
- (4) A Landlord under a long lease of dwelling may make an application to the Leasehold Valuation Tribunal for a determination that a breach of covenant or condition in the lease has occurred.
- (5) But a Landlord should 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 part.
 - b) Has been the subject of a determination by a Court; or
 - c) Has been the subject of a determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

6 Preliminaries

- 6.1 At the outset the Respondent informed the Tribunal that he had not read any of the documentation and that he could neither read nor write.
- 6.2 He therefore said that he and Mrs Parsley would not be staying and abruptly left the room.
- 6.3 At the request of the Chairman, the Clerk to the Tribunal also left the room to speak with the Respondent and she was able to persuade him that it would not be in his interests to absent himself from the hearing of this matter, the Respondent then returned to the hearing and the procedure was explained to him in detail.
- 6.4 Before presenting his case Mr Jenkins handed to the Tribunal, by way of an authority, a previous decision of the Tribunal, namely the decision in case number: CHI/00HB/LBC/2005/0001 and between 28 to 30 Barclay Square Limited (Applicant) and Mr David Coates and Mrs Emma Coates (Respondents).

- 6.5 This decision had specifically referred to, amongst others, the decision of Fitzpatrick, the Sterling Housing Association Limited (1999) 4 All ER 705 in defining the meaning of the word family and what constituted a family.

7 The Applicant's Case

The Applicant in their application alleged four specific breaches of covenant, namely:

- 7.1 That there has been a breach of recital 3(i) of the Lease in that the Respondent has let the property to two males and a female, none of whom were the Respondent and that the Respondent has let the premises without the consent of the Landlord.
- 7.2 That the Respondent has breached paragraph 4 of Schedule 4 of the Lease in that by subletting the premises to third parties, they were not "a family unit" and the premises were in fact being used as a multiple occupancy premises.
- 7.3 That the Respondent has breached paragraph 13 of Schedule 4 of the Lease by leaving items containing rubbish in the communal area (this alleged breach has subsequently been rectified by the Respondent).
- 7.4 That paragraph 3 of Schedule 4 of the Lease has been breached by individuals spitting out of the windows, throwing belongings and cigarette butts out of the windows and making a noise between the hours of 11pm and 7am resulting in complaints being made to the Applicant by neighbouring properties.
- 7.5 Mr Jenkins on behalf of the Applicant conceded at the outset that the alleged breaches referred to in 7.3 and 7.4 above had been remedied and were not therefore being pursued.
- 7.6 The only breaches that were therefore being pursued were those set out in 7.1 and 7.2 above and which were referred to in paragraphs 8 and 9 of the witness statement from Morris Potter who is the secretary of Sycamore Court Management (Chard) Ltd.
- 7.7 Mr Jenkins then referred to the lease of the premises quoting the covenants (recital 3(i) and paragraph 4 of Schedule 4) on which the applicants now based their case, namely not to sublet or divide the property by way of assignment or underletting and to use the premises as a private dwelling or for the occupation of one family only.
- 7.8 Mr Jenkins made reference to the witness statement of Mrs Haines (page 59) and her evidence that three people had been living at the premises namely the Respondent's son and two others. Mrs Haines was subsequently called as a witness. She confirmed that she lived in a flat below that of the Respondent. She confirmed the content of her witness statement and that the three occupants of the Respondent's flat referred to in the papers were no longer living at the property and that there was now a different lady living at the property.
- 7.9 Reference was also made to the notes of a meeting that took place on 16 July 2012 when the Respondent stated "that his son had various medical

conditions. The persons installed with him were a female whom he know from the church and a Portuguese man who was a friend of a friend”.

- 7.10 Reference was then made to copies of correspondence amongst the bundle of papers and found on pages 44, 52, 54, 55, 56 and 57. This correspondence had been addressed to the Respondent or his solicitors but no replies had been received.
- 7.11 Mr Jenkins referred to the fact that access to the property had been denied that morning and stated that a prima facie case showed that a number of individuals were occupying the property and that they were not a family unit. He further went on to say that the matter could have been resolved by the Respondent stating who was living at the premises.

8 The Respondent's Case

- 8.1 Mr Lathom stated that he had bought the property for his son to live in, where he could have his own independence with two carers. He told the Tribunal that, sadly, his son suffered from Aspergers Syndrome and that he was 19 years of age. Furthermore, there had been times when managing his son's illness had been difficult on both himself and his partner, Mrs Parsley.
- 8.2 He stated that the lady from the church and the other man (of Portuguese origin) had been carers for his son and whilst they did not have any medical qualifications, they were of good character and looked after his son.
- 8.3 Following an incident his son had now returned to Mr Lathom's home and was living in an annex there.
- 8.4 Mr Lathom stated that he had on a number of occasions asked for a meeting with Mr Potter, the secretary of the applicant company without success.
- 8.5 He went on to say that he believed, that last August there was a meeting but that he had not been invited to it.
- 8.6 At the same time, Mr Lathom had been facing a number of problems due to the terminal illness and subsequent death of his mother.
- 8.7 He stated that he would still like his son to return to the flat and that the young lady who is currently living there would, hopefully, look after him.
- 8.8 In cross examination Mr Jenkins asked why the Respondent had not been to see his solicitor, Mr Rideout and why he had not responded to the letters from Clarke Willmott. Mr Lathom stated that he could neither read nor write and that he did not feel that he had been given the opportunity to put his side of things.
- 8.9 Mr Jenkins further suggested that this was the first time that reference had been made to carers living in the flat.
- 8.10 In answer to further questions from Mr Jenkins Mr Lathom declined to comment other than to reiterate that the people who were there were there as carers and therefore he felt they were part of a family unit.

8.11 In answer to a question from the Tribunal Mr Lathom stated that the carers were found as friends and that the original lady carer was a very able person (she is apparently a "street preacher"). There was apparently no rental agreement and the lady who is currently residing there pays no rent.

9 Costs Application

9.1 Following the conclusion of the evidence, Mr Jenkins, on behalf of the Applicant, invited the Tribunal to make an award of costs pursuant to Schedule 12 of the Commonhold and Leasehold Reform Act 2002 on the basis that the Respondent had acted unreasonably. That he had not co-operated either by allowing an inspection of the premises prior to the hearing or, by answering some of his questions with no comment answers at the hearing itself.

9.2 He therefore asked the Tribunal to award the maximum sum of £500 towards the Applicant's costs.

10 The Tribunal's Decision

10.1 Having heard evidence from both parties, and the fact that Mr Lathom's son and his two carers had now moved out of the premises, the Tribunal did not have to consider whether or not Mr Lathom's son and his carers constituted a "family unit" and even if they had concluded that there was not a family unit at that time the particular breach complained of had been remedied by the original parties moving out of the premises.

10.2 However, the Tribunal did accept the evidence of Mrs Haines, namely that there was a single lady living at the premises and indeed that same single lady had been seen leaving the premises earlier that morning by members of the Tribunal whilst waiting to inspect the premises.

10.3 The Tribunal therefore concluded that, notwithstanding Mr Lathom's reluctance to give the name of the lady in residence or details of her tenancy or occupation there had therefore been a parting of possession and some sort of underletting by Mr Lathom and to that extent there had therefore been a further and existing breach of covenant. Furthermore, the Tribunal heard no evidence to suggest that the lady was part of Mr Lathom's family.

10.4 With regard to the question of costs, the Tribunal was mindful of the fact that Mr Lathom had refused access to the Tribunal earlier that morning, had refused or failed to respond to a number of letters from the Applicant or their solicitors and had declined to answer a number of questions at the hearing.

10.5 To that extent, the Tribunal felt that his behaviour had been unreasonable and awarded the sum of £250 by way of costs to the Applicant.


.....
Andrew Duncan McCallum Gregg

(Chairman)

19 March 2013