



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

**Case Reference** : **LON/00AZ/LBC/2018/0037**

**Property** : **Ground Floor Flat, 1 Manwood  
Road, London, SE4 1AA**

**Applicant** : **Mr Ajay Kumar Anand**

**Representative** : **In person**

**Respondents** : **(1) Mr Andrew John Godbold  
(2) Ms Joanna Frances Godbold**

**Representative** : **Miss Meech of Counsel**

**Type of Application** : **Determination of an alleged breach  
of covenant**

**Tribunal Members** : **Judge I Mohabir  
Mr R Shaw FRICS**

**Date and venue of  
Hearing** : **25 July 2018  
10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **1 October 2018**

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**DECISION**

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## ***Introduction***

1. This is an application made by the Applicant under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that the Respondents have breached various covenants and/or conditions in their lease.
2. The Respondents are the leaseholders of the property known as Ground Floor Flat, 1 Manwood Road, London, SW4 1AA (“the property”) pursuant to a lease dated 1 April 1986 for a term of 99 years from that date (“the lease”). The Applicant is the freehold owner of the building.
3. It is common ground that the Respondents sublet the property under an assured shorthold tenancy commencing on 26 June 2017 for a term of 24 months.
4. On 25 April 2018, the Applicant made an application to the Tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) (“the Act”) for a determination that by subletting the property the Respondents had breached the following covenants in lease:
  - (a) clause 3(7)(a), not at any time to assign sublet or part with possession of part only of the demised premises or to suffer the same to be done.
  - (b) clause 3(7)(b), not to assign sublet or part with possession of the flat without first obtaining from the assignee transferee or underlessees or undertenant a covenant directly with the lessor to pay the contribution covenanted to be made herein and also in respect of the rent reserved under the lease.
  - (c) clause 3(8), within four weeks after any subletting or parting with possession to give notice of such in writing and to deliver to the lessor or his solicitors a verified copy of every instrument or

transfer assignment or subletting and to pay the lessor a fee of £10 plus VAT for the registration of every such notice.

5. The grounds relied on by the Applicant in his application notice can be summarised as follows:

**Ground 1**

- (a) there is no provision in the lease that permits the property to be let on an assured shorthold tenancy and the Respondents are in breach of (the) *“lease covenant”*.

**Ground 2**

- (b) the case of *Arnold v Britton & Ors* [2015] UKSC 36 decided that the lease is a binding contract between the freeholder and tenant and a court cannot change the terms of the lease.

**Ground 3**

- (c) *“details of the lease terms breaches are explained in paragraph 6”*, which refers to the clauses set out at paragraph 4 above.

**Ground 4**

- (d) *“this point was raised with lessee solicitors and we received a email from the solicitors dated 23 April 2018 copy is enclosed for information”*.

6. Each of the grounds are considered in turn below.

**Decision**

7. The hearing in this case took place on 25 July 2018. The Tribunal did not inspect the property. The Applicant appeared in person. The Respondent was represented by Miss Meech of Counsel.

8. The Tribunal heard submissions from both parties. It, firstly considered whether any of the grounds relied on in support of the application had been made out by the Applicant.
9. As to ground 1, the Tribunal accepted that this was not correct because the lease did not contain an unqualified prohibition against subletting, either by an assured shorthold tenancy or otherwise.
10. As to ground 2, the Tribunal was satisfied that it had no relevance to this case. The Respondents are not seeking to change the lease terms.
11. As to ground 3, this simply recited the clauses in the lease and was not a ground for the application.
12. As to ground 4, this was merely comment and was not a ground for the application.
13. On a narrow consideration of the application based on the grounds relied on by the Applicant, the Tribunal found that none of the grounds had been made out and the application fails on this basis.
14. However, the Tribunal bore in mind that the Applicant (who appears before it on a regular basis) is a litigant in person and may not have put his case in the clearest way. The application, in terms, appears to raise the wider issue of whether the subletting of the property by the Respondents under an assured shorthold tenancy amounted to an assignment, underletting or parting with possession within the meaning of clause 3(7)(b) of the lease and what flows from this.
15. To determine this issue, it was necessary for the Tribunal to construe the meaning and effect of the clause. To do so, it was necessary to identify what the contracting parties intended.

16. In *Arnold v Britton*, the Supreme Court set out the approach to be taken when construing contractual terms. Lord Neuberger, who gave the leading judgement, said the intention of the parties could be ascertained by considering:
- (a) the natural and ordinary meaning of the clause.
  - (b) any other relevant provisions of the lease.
  - (c) the overall purpose of the clause and the lease.
  - (d) the facts and circumstances known or assumed by the parties at the time the document was executed.
  - (e) commercial common sense
  - (f) disregarding subjective evidence of any party's intentions.
17. It is clear that clause 3(7)(b) is intended to deal with the consequences where the lessee had assigned, underlet or part with possession of the property. This was conditional upon the lessee obtaining a direct covenant from the assignee or transferee with the lessor to pay "the contribution" (not defined in the lease), the rent reserved under the lease and all of the other covenants the lessee is required to perform.
18. Under the terms of the lease, only the lessee is contractually obliged to pay "the contribution", the rent and perform the lessee's covenants. These contractual obligations are created by the lease in relation to the legal estate granted by it, that is, the leasehold interest in the property. When the lease was granted the original parties enjoyed privity of contract.
19. The privity of contract was lost when there was an assignment, underletting or parting of possession of the *leasehold interest* (our

emphasis). When this occurred, the parties only enjoyed privity of estate and the historic position was that the lessor could not directly enforce the lessee's covenants in a lease against the assignee or transferee. The lessor could only do so against the original lessee unless the assignee or transferee entered into a direct covenant with the lessor. It should be noted that this situation has now been addressed by the Landlord and Tenant (Covenants) Act 1995 and this lease was granted before the commencement of the Act. It was, therefore, the intention of the parties to address this position when the lease was granted by requiring the lessee to first get the assignee or transferee to enter into a direct covenant with the lessor under clause 3(7)(b).

20. The clause is only concerned with enforcement of the contractual obligations of the lessee under the lease when there has been a disposition of the leasehold interest and nothing else. It follows that where this has not occurred, there is no requirement on the part of the lessee to obtain the direct covenant required by clause 3(7)(b). The granting of an assured shorthold tenancy by the Respondent does not amount to a disposition of the leasehold interest in law. Therefore, the Respondents were not required to obtain a direct covenant between their tenant and the Applicant before letting the premises and they have not breached clause 3(7)(b) of the lease.
21. It also follows that there was no requirement on the part of the Respondents to give the Applicant notice of the subletting under clause 3(8) of the lease and they have not breached the clause.
22. Accordingly, the application is dismissed.

Judge I Mohabir  
1 October 2018