



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

Case Reference : LON/00AN/LBC/2022/0068

Property : Flat 1, 111 Dawes Road London SW6 7DU

Applicant : Sherman Securities Ltd (Landlord)

Representative : EDC Lord & Co Solicitors (Mr Isitt Solicitor)

Respondent : Deborah Sanders (Tenant)

Representative : Not present nor represented

Type of Application : Breach of covenant

Tribunal Members : Judge F J Silverman Dip Fr LLM
Mrs S Redmond MRICS

Date and venue of Hearing : CVP remote
16 January 2023

Date of Decision : 17 January 2023

DECISION

This has been a remote consideration by video conference which has been consented to or not objected to by the parties. The form of remote hearing was CVP:REMOTE. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents to which the Tribunal was referred are contained in an electronic bundle the

contents of which are referred to below. The orders made in these proceedings are described below.

Decision of the Tribunal

The Tribunal determines that the Respondent Tenant is in breach of covenant under the terms of her lease in that she has failed to pay ground rent and insurance contributions properly demanded of her and for which she is liable under the terms of her lease.

Reasons

- 1 The Applicant landlord sought a declaration from the Tribunal that the Respondent tenant was and remained in breach of the covenants of her lease.
- 2 The Application was filed on 12 September 2022 and Directions were issued on 11 October 2022.
- 3 The hearing took place by remote video conference (CVP) to which the parties had previously consented or not objected. In accordance with current Practice Directions the Tribunal did not make a physical inspection of the property. The issues in the case were capable of resolution without a physical inspection of the property.
- 4 Mr Isitt, solicitor for the Applicant, addressed the Tribunal at the hearing and was accompanied by Mr Sherman a Director of the Applicant company who gave evidence. The Tribunal had received and read the electronic bundle of documents filed on behalf of the Applicant (referred to below). The Respondent was neither present nor represented at the hearing and had made no response to the Application (see below).
- 5 The Applicant landlord is the freeholder of the building known as 111, Dawes Road London SW6 7DU (the building) which comprises a number of self-contained flats. The leasehold title to the ground floor Flat (no 1) (the property) is held by the Respondent under a lease for 125 years from 24 December 2021 dated 07 August 2013 and made between the Applicant and Respondent.
- 6 The Respondent is the tenant of the property.
- 7 The lease under which the Respondent holds the property contains covenants by the tenant to pay ground rent (Sched 3 clause 1.1) and to pay a proportionate part of the insurance premium for the property Schedule 3 clause 23(1)).
- 8 The Respondent has failed to make any payments in respect of either ground rent or insurance contributions since 2019 despite service on

her of the requisite demands by the landlord. Demands for the years 2019-2020, 2020-2021, 2021-2022 and 2022- 2023 are found on pages 56- 74 of the bundle.

- 9 With the exception of the 2022-2023 demand, the Applicant concedes that that some of the demands may have been served by ordinary first class post contrary to the provisions of Clause 6.3 of the lease which specifies service by recorded delivery or registered post. However, none of the demands were returned to the Applicant, neither was any response or acknowledgement of receipt made by the Respondent.
- 10 Although service by recorded /registered post is required by clause 6.2 of the lease the Applicant argues that these demands should be deemed to be properly served relying on the Court of Appeal decision in *Yates Building Company Ltd v Pulleyn & Sons* [1975] EWCA Civ J0244-4. They also rely on the statutory deemed service provisions in s7 Interpretation Act 1978 and s196 Law of Property Act 1925 which deem letters to have been served on a given day following posting. The Tribunal agrees with this argument and finds that the demands were properly served.
- 11 The 2022-2023 demand was served by first class post and recorded delivery (page 81) which is deemed to be good service under clause 6.2 of the lease irrespective of whether the document was actually received by the addressee (page 35). This demand refers to the earlier years' arrears and also encloses the statutory notices required to accompany such demands. The recorded delivery version of this letter was later returned to the Applicant by the Royal Mail marked 'undeliverable'. It is however still deemed to have been served by virtue of clause 6.2 of the lease.
- 12 The Applicant was concerned at the Respondent's total lack of response to their letters. Mr Sherman had visited the property twice and had put a copy of the demands under the door but had been unable to obtain any response when he knocked on the door. The Applicant has no alternative address, email, or telephone number for the Respondent. Mr Sherman had asked a tenant of another flat in the building to speak to the Respondent and ask the Respondent to contact the Applicant. An email on page 73 dated 31 August 2022 confirms that Ms Proctor had met with the Respondent and passed on Mr Sherman's message but there was still no direct contact made by the Respondent. Ms Proctor's response suggests that the Respondent was at that time still either living at or at least visiting the property.
- 13 In October 2022 the Applicant instructed John Law Investigator to make enquiries in an attempt to contact the Respondent. Their written report was supplied to and read by the Tribunal (addendum to the Tribunal bundle). Although the investigator had not managed actually to locate the Respondent their investigations suggested that she

remained active in and around the property and was likely still to be living there.

- 14 The Respondent remains the registered proprietor of the property as shown on the Land Register (page 50) and the address on the register, which is identical to the property's postal address, is the one used for service by the Applicant.
- 15 There has been no response from the Respondent to documents which have been sent to her by the Tribunal, neither have any such documents been returned by the postal service as undeliverable.
- 16 The Tribunal finds that the Applicant has taken all reasonable steps to locate the Respondent and to serve on her the requisite demands and notices asking her to pay ground rent and a contribution to the insurance premium as required by the terms of her lease. The Tribunal also accepts Mr Sherman's unchallenged oral and written evidence that the amounts owing stem from the service charge year 2019-2020 prior to which there had been no default on this account.
- 17 Accordingly, the Tribunal finds that the Applicant is entitled to declarations pursuant to Section 81 of the Housing Act 1996 and Section 168 of the Commonhold and Leasehold Reform Act 2002 that the Respondent's failure to pay insurance premiums and ground rent constitute breaches of the Lease.

18 The Law

Commonhold and Leasehold Reform Act 2002 s 168

No forfeiture notice before determination of breach

(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 a leasehold valuation tribunal for a determination that a breach of a 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 determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Section 81 Housing Act 1986

81 Restriction on termination of tenancy for failure to pay service charge.

(1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless—

(a) it is finally determined by (or on appeal from) the appropriate tribunal or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or

(b) the tenant has admitted that it is so payable.

(2) The landlord may not exercise a right of re-entry or forfeiture by virtue of subsection (1)(a) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(3) For the purposes of this section it is finally determined that the amount of a service charge or administration charge is payable—

(a) if a decision that it is payable is not appealed against or otherwise challenged, at the end of the time for bringing an appeal or other challenge, or

(b) if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3A).

(3A) The time referred to in subsection (3)(b) is the time when the appeal or other challenge is disposed of—

(a) by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or

(b) by its being abandoned or otherwise ceasing to have effect.

(4) The reference in subsection (1) to premises let as a dwelling does not include premises let on—

(a) a tenancy to which Part II of the Landlord and Tenant Act 1954 applies (business tenancies),

(b) a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 in relation to which that Act applies, or

(c) a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995.

(4A) References in this section to the exercise of a right of re-entry or forfeiture include the service of a notice under section 146(1) of the Law of Property Act 1925 (restriction on re-entry or forfeiture).

(5) In this section

(a) “administration charge” has the meaning given by Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002,

(b) “arbitration agreement” and “arbitral tribunal” have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and “post-dispute arbitration agreement”, in relation to any matter, means an arbitration agreement made after a dispute about the matter has arisen,

(c) “dwelling” has the same meaning as in the Landlord and Tenant Act 1985 (c. 70), and

(d)

“service charge” means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).

(5A) Any order of a court to give effect to a determination of the appropriate tribunal shall be treated as a determination by the court for the purposes of this section.

(6) Nothing in this section affects the exercise of a right of re-entry or forfeiture on other grounds.

(7) For the purposes of this section, “appropriate tribunal” means—

- (a) in relation to premises in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
- (b) in relation to premises in Wales, a leasehold valuation tribunal.

Name: Judge F J Silverman as Chairman **Date:** 17 January 2023

Note:

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rplondon@justice.gov.uk.
2. 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.
3. If the person wishing to appeal does not comply with the 28 day time limit, the 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.
4. 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.