

Residential Property Tribunal Service

Leasehold Valuation Tribunal for the London Rent Assessment Panel

Commonhold and Leasehold Reform Act 2002

Section 168 (4)

Ref. LON/00BJ/LBC/2006/0013

Property: 5 Glenalmond House, Manor Fields Estate, SW15 3LP

Applicant: Manor Fields Estate Ltd

Represented by : Rodgers and Burton, Solicitors

Respondent: The Personal Representatives of the Estate of Mrs P.L.Greville (decd.)

Represented by: Miss E.Greville

Members of the Leasehold Valuation Tribunal: Mrs J.McGrandle BSc MRICS MRTPI
Mr D.Levine OBE MRICS
Mr P.Roberts Dip Arch RIBA

1.0 Preliminary

1.1 The applicant is the freeholder of 5, Glenalmond House, a flat in a block forming part of the Manor Fields Estate, Putney Hill, SW15. The respondent is the leaseholder of the flat. The previous leaseholder was Mrs P.L. Greville. She died in 2005 and her affairs are being dealt with by her daughter who lives in Canada.

1.2 On 20th February 2006 the Tribunal received an application from Rodgers and Burton acting on behalf of the freeholder for a determination under Section 168 (4) of the Commonhold and Leasehold Reform Act 2002 that there had been a breach of the lease in the following respects:

“1) The Demised Premises has been assigned as a whole without the previous consent in writing of the Lessor (no consent having been requested)

2) Following the underletting of the premises no Notice of Assignment has been given nor fee paid

(3) That the letting is contrary to the provision that the premises are only to be used or occupied as a private residence for the sole occupation of the Lessee and his family and servants.”

1.3 The application was accompanied by a statement of case dated 15th February 2006 and witness statements from Heather Oxborrow, Estate Manager of Manor Fields Estate, dated 21st December 2005 and Julia Moore, Managing Clerk of Rodgers and Burton, dated 27th January 2006.

1.4 Directions were issued by the Tribunal on 23rd March 2006 following an oral pre-trial review held on that day. The Directions required from each party submission of a statement of case and supporting documents. The applicant sent in no further documents but the respondent sent in to the Tribunal by way of a statement of case a detailed letter dated 25th April 2006 which was copied to the applicant. The Tribunal also had before them correspondence between the parties from November 2005 to May 2006.

2.0 Lease

2.1 The respondent originally held for a term of 99 years from 1.4.69 under the terms of a lease dated 3.6.70. The lease was extended to 2983 by a deed of variation dated 8 October 1990.

2.2 The following covenants in that lease as varied are relevant:

2(x)(b) "Not to assign transfer underlet or part with possession of the Demised Premises as a whole without previous consent in writing of the Lessor."

2(xiv). "Within one month of every assignment assent transfer or underlease of or relating to the Demised Premises or any part thereof to produce the same to the Solicitors for the time being of the Lessor or in the case of a devolution of the interest of the Lessee not perfected by an assent within 12 months of the happening thereof to produce to the said solicitors the probate of the will or the letters of administration under which such devolution arises and to pay to them their reasonable fee for registration together with any tax payable thereon in respect of each such assignment transfer assent underlease or devolution."

2(xxviii)(a) "To use and occupy the Flat only as a private residence for the sole occupation of the Lessee (or if the Lessee shall be a corporation for the sole occupation of an official Lessee nominated from time to time by the Lessee provided that the Lessee shall notify in writing the Lessor of the name of any official so nominated) and his family and servants."

3.0 Decision

3.1 It is common ground between the parties that there has been historic sub-letting of the flat by the leaseholder. The witness statement of Heather Oxborrow dated 21st December 2005 has not been challenged by the respondent who indeed states in her statement of case to the Tribunal dated 25 April 2006 (and copied to the applicant) :

“.....through our managing agents, Barnard Marcus, a notice was served on the tenants of the above flat requiring them to vacate the property no later than 1st April 2006.”

3.2 Further, the witness statement of Julia Moore, dated 27th January 2006, stating that no application for consent to sub-letting nor any notice of sub-letting was ever received, has not been challenged by the respondent.

3.3 The Tribunal therefore determines as a finding of fact that there has been no consent to this sub-letting and that therefore there has been a historic breach of covenant.

3.4 .As noted above, in her statement of case dated 25th April 2006 to the Tribunal the respondent states that “.....a notice was served on the tenants of the above flat requiring them to vacate the property no later than 1st April 2006.” In a letter dated 6th April 2006 to Rodgers and Burton, Miss Greville states that “The above flat is currently vacant. Therefore, there is no “unlawful sub-letting” of the above property.”

3.5 The applicant did not update for the benefit of the Tribunal Heather Oxborrow’s statement of 21st December 2005 by ascertaining whether the flat was in fact now vacant. The Tribunal were therefore dealing with a witness statement which was 5 months old and which did not reflect subsequent events.

3.6 The applicant has not challenged the respondent’s statements, in the five to eight weeks in which it has had them in its possession. Therefore the Tribunal finds as a matter of fact that the breach of covenant relating to the sub-letting has now been remedied. As to the alleged breach of an assignment of the whole without consent, the provisions of the lease relating to an assignment following the death of a lessee are set out at para. 2.2 above. The statement of the respondent was that the administration of the lessee’s estate is still in progress and probate is to be obtained in Canada. We find that there has been no breach of covenant in this respect.

3.7 Communications between the parties in this case have been difficult, aggravated by the recent death of the leaseholder and the administration of her affairs by her daughter in Canada. Nevertheless, if time had been taken by the applicant’s solicitors to ascertain on the ground whether the respondent’s statements were correct, the matter could have been easily resolved without reference to the Tribunal, thus saving time and money for all concerned.

CHAIRMAN..... *J. McCann*

DATE..... *27th June 2006*