

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
 DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
 (LONDON PANEL)**

COMMONHOLD AND LEASEHOLD REFORM ACT 2002 SECTION 168

Property: 76 Winchester Court, Vicarage Gate, London
 W8 4AF
Landlord: Winchester Court Freehold Ltd
Tenant: Halat Co Ltd
Sub-tenant: Mr Saleh Ali El Shammari

Tribunal Member:
Mr Adrian Jack (Chairman)

Ref : LON/00AW/LBC/2007/0044

1. The landlord seeks a determination that the tenant has assigned or underlet the flat in breach of the covenants of the lease.
2. The landlord is the freehold owner of the premises. The tenant holds under a lease originally granted in 1973 for term expiring in 2035. By a lease extension granted in 1984 the term was extended for 999 years from 24th March 1984.
3. Paragraph 8 of Schedule 4 to the lease contains a covenant by the tenant:
 - “(i) Not to assign transfer underlet or part with possession of any part of the Flat (as distinct from the whole) in any way whatsoever
 - (ii) Not to assign transfer underlet or part with possession of the Flat as a whole without the previous consent in writing of the Lessor such consent not to be unreasonably withheld and to be subject to compliance by the Tenant with the provisions of paragraphs 9 and 10 of this Schedule.”
4. Paragraphs 9 and 10 are irrelevant for the purposes of this application.
5. Directions were given by the Tribunal on 11th September 2007. These provided for the determination of the matter without an oral hearing, unless either party requested such a hearing. No party has done so, so the Tribunal determines the matter on the basis of the paper representations.


6. Section 168(4) of the Commonhold and Leasehold Reform Act 2002 provides:
“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.”
7. It is common ground that the flat has been sublet to Mr El Shammari under a shorthold assured tenancy commencing on 1st July 2007. There has thus been an underletting of the whole of the flat.
8. The landlord asserts that the granting of that sub-tenancy is a breach of the lease. The tenant’s case is that the landlord has consented to the grant and that in any event the landlord could not reasonably refuse consent to the grant. The landlord makes various objections to Mr El Shammari as a tenant.
9. The landlord makes, however, a preliminary objection that Dr Ali Bastami, who purports to act on the tenant’s behalf, is not properly authorised by Halat Co Ltd to act its behalf. In my judgment, however, Dr Bastami has amply demonstrated that he authorised to act on Halat Co Ltd’s behalf. As long ago as 28th May 2003 Prince Evans, the solicitors acting on Halat Co Ltd’s behalf, confirmed that Dr Bastami was authorised to negotiate and sign any tenancy agreement on Halat Co Ltd’s behalf. It seems clear that since then Dr Bastami has acted in that capacity on Halat Co Ltd’s behalf since then without objection by Halat Co Ltd.
10. Dr Bastami’s case is that, when he wanted to let the property to Mr El Shammari, in June 2007 he approached Mr David Naylor, whom he believed to be the landlord’s agent. Mr Naylor sent him back the “Winchester Court Freehold Limited Sub-letting Application Form” under cover of a complements slip dated 12th June in the name of David Naylor & Company Chartered Secretaries.
11. The form wanted various documents like a copy of a passport, a UK bank reference and references. It demanded a fee of £300. Dr Bastami sent the form with various documents and the £300 fee to Mr Naylor. The sub-lease sent to Mr Naylor was in the form of an assured shorthold tenancy, but the landlord was expressed to be Mr Ghambarali Mohajer. Prince Evans have explained that Mr Mohajer was another agent of Halat Co Ltd and that he was acting on Halat Co Ltd’s behalf in granting the sub-lease. Putting his name as the landlord was a mistake.
12. Dr Bastami says that after sending the documents he had a conversation with Mr Naylor, who said (according to Dr Bastami) that it was in order for Dr Bastami to complete the sub-letting agreement. Mr Naylor wanted a cheque for £20 for a key fob, which would be made available to Mr El Shammari through the porter. Dr Bastami sent the cheque to Mr Naylor and a fob was duly made available to Mr El Shammari.
13. The landlord provides a witness statement from Mrs Patricia Brennan, who is a director of the landlord. This witness statement does not answer any of the points raised by the tenant, as summarised in the previous three paragraphs, and indeed does not mention Mr Naylor at all. The landlord has obtained no evidence from Mr Naylor. If Mr Naylor was not authorised to act on the landlord’s behalf, it is at the very least surprising that the landlord has provided no evidence that it has even written to Mr Naylor to complain.
14. The lease does not provide that consent to a sub-letting must be given in writing. Mr Naylor was the agent. It is plain that he was the appropriate person for Dr Bastami to approach in order to obtain consent to sub-let.

Otherwise, why would he have a form for that purpose? Where a landlord delegates this task to the agent, the agent in my judgment has ostensible authority to give the relevant consent.

15. Even if that were wrong, however, the landlord would still have to explain how it came about that Mr Naylor accepted the cheques for £300 and £20 and provided Mr El Shammari with the fob. The inevitable inference (in the absence of any evidence whatsoever from the landlord to the contrary) is that Mr Naylor was authorised by the landlord to do so, because the landlord was at that stage content to allow Mr El Shammari to take the sub-lease.
16. Accordingly in my judgment the landlord consented to the granting of the sub-lease to Mr El Shammari. There was therefore no breach of the terms of the lease to the tenant.
17. If I were wrong about that, then it would in my judgment be necessary to consider whether the landlord was refusing consent unreasonably. The landlord appears to consider that the question of reasonableness is not for the Tribunal on this application. I disagree. It is a defence to the allegation of breach by sub-letting that the landlord has unreasonably refused consent. It is true that the burden of proof lies on the tenant, but the tenant in this case has raised the point and put forward evidence to show that there were no adequate grounds for refusing consent to a sub-letting to Mr El Shammari. Since, however, the landlord in my judgment consented to the sub-letting, I shall not consider this issue further.

DECISION

The Tribunal finds that there was no breach of the covenants or conditions of the lease by the tenant.



Adrian Jack, chairman

22nd October 2007