



Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**LON/00BK/LBC/2007/0042**

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**Premises:** 21 Florence Court  
Maida Vale  
London W9 1TB

**Applicant:** Moreland Majestic Ltd

**Represented by:** Ms Tina Conlan, counsel

**Respondent:** NQAQSR Certification Ltd

**Represented by:** Mr M Mehra

**Tribunal:** Mr NK Nicol  
Mr P Casey MRICS

**Date of Hearing:** 25/10/07

**Date of Decision:** 25/10/07

## REASONS FOR DETERMINATION

1. The Applicant is the lessor and the Respondent the lessee of Flat 21, Florence Court, Maida Vale, London W9 1TB. The Respondent has sub-let the flat on an assured shorthold tenancy but the Applicant claims that, in doing so, there have been various breaches of the lease. In order to enforce the terms of the lease, the Applicant applied to the Tribunal on 24<sup>th</sup> August 2007 for a determination under s.168 of the Commonhold and Leasehold Reform Act 2002, the relevant parts of which read as follows:-

(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 (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,

...

(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.

### *The Lease*

2. The Respondent was the assignee of the original lease on the subject property. In 2002 the parties agreed an extended lease. It was signed on 1<sup>st</sup> May 2002 for a term of 78 years, less 3 days, from 24<sup>th</sup> June 1986. The covenants by the Applicant, as Tenant, with the Respondent, as Landlord, are set out in the Fourth Schedule. The copy of the lease produced by the Applicant to the Tribunal contained the following paragraphs in the Fourth Schedule:-

14(1) Not at any time to underlet the whole of the Premises except by an underlease which shall:-

- (a) be for a term not exceeding seven years at a full market rent without a fine or premium
- (b) contain provisions similar to those herein contained for payment of the said service charge
- (c) determine at least seven years prior to the expiry of the term

17 On the occasion of every assignment of the Premises and in every Underlease of the whole of the Premises to insert a covenant by the assignee or

the underlessee as the case may be directly with the Landlord to observe and perform the covenants on the part of the Tenant and conditions herein contained and for this purpose to give to the Landlord or its agents not less than thirty days' written notice of any such assignment or underlease intended to be made

18        Within one month after every assignment underlease charge or devolution of or transfer of title of the Premises to give or procure to be given to the Landlord's solicitors notice in writing of such disposition or devolution ... or transfer of title with full particulars thereof and in the case of an underlease a copy thereof for registration and retention by the Landlord and at the same time to produce or procure to be produced to the Landlord the document effecting or (as the case may be) evidencing such disposition or other matter in order that the same may be perused and a memorandum of registration endorsed thereon and to pay to the Landlord's solicitors a fee of not less than Ten Pounds in respect of each such registration together with any fee payable to any Superior Landlord

3. The Applicant claimed that the Respondent had breached paragraphs 14(1), 17 and 18 of the Fourth Schedule to the lease. The Respondent's first contention was that the copy of the lease relied on could not be vouched for. They asserted that their representative had signed every single page of the lease when it had originally been executed and the copy produced did not reflect that. Mr Mehra, on behalf of the Respondent, thought that paragraphs 14(1) and 18 had been accurately reproduced but asserted that paragraph 17 was subject to a proviso exempting tenancies for a term of 12 months or less.
4. Unfortunately, the Respondent had provided no evidence to support their assertions. Mr Mehra pointed out that his colleague, Mr Ashok Kapur, had e-mailed the Tribunal on 5<sup>th</sup> October 2007 and, amongst other things, had questioned the validity of the copy lease produced by the Applicant. Mr Mehra asserted that the Applicant thereby had a duty to disclose relevant documents and to prove that there had not been any agreement between the parties prior to the execution of the lease to vary paragraph 17 in the way he suggested.
5. The Tribunal disagrees with Mr Mehra. The Respondent does not dispute that there was a lease executed on the day and with the term shown on the copy lease. Nor do they dispute that its terms are accurate, save with the one exception of paragraph 17 of the Fourth Schedule, or that the signature shown at the end is of

their appointed representative. It is the Respondent which asserts that the copy lease is inaccurate and which seeks to create a defence to this application based on it. They had a minimum of at least three weeks to come up with their copy of the lease but have not even provided an explanation as to why they have not, let alone done so. The evidence in front of the Tribunal overwhelmingly points to the copy lease being accurate. It is for the Respondent to refute this but they have not produced anything which could satisfy the Tribunal that they can do so. Therefore, the Tribunal has proceeded on the basis that the terms of the lease between the parties are as set out in paragraph 2 above.

### *Alleged Breaches*

6. The Respondent's bundle of documents for the hearing of this application contained a copy of an assured shorthold tenancy between themselves and Hiyam Tehine-Hijazy for a term of 12 months commencing 27<sup>th</sup> July 2006 at a monthly rent of £1,900. Mr Mehra informed the Tribunal that a further agreement had been executed on the expiry of this agreement for a further term of 12 months. There is nothing in the lease between the parties which absolutely prohibits the creation of such a tenancy but there must be compliance with the aforementioned paragraphs 14(1), 17 and 18 of the Fourth Schedule.
7. Having seen the tenancy agreement for the first time in the week preceding the Tribunal hearing, the Applicant now accepts that it complies with sub-paragraphs (a) and (c) of paragraph 14(1).
8. However, the tenancy agreement does not comply with paragraph 14(1)(b). Mr Mehra pointed to clause 6 of the tenancy agreement, the last sentence of which states,  
  
"The tenant will abide by the covenants entered by the landlord with any superior landlord and observe and perform those covenants."
9. In the Tribunal's opinion, this clause is no answer to an allegation of breach of paragraph 14(1)(b) which requires that there be a clause in the tenancy requiring the tenant to pay the service charge. It is quite a different thing to require a tenant to comply with the landlord's own obligations, as to the payment of service charges or otherwise.

10. Mr Mehra further asserts that Mr Lakhanpal of the Applicant's managing agents, Freshwater, agreed with him back in 2001 that a tenancy in this form would constitute sufficient compliance with the terms of the lease. There are three objections to this as a line of defence:-
- (a) Mr Mehra was unable to point to a shred of evidence in support of the alleged agreement.
  - (b) Even if there was agreement in relation to a tenancy in 2001, that does not necessarily extend to every subsequent agreement.
  - (c) The Tribunal has been tasked by this application and by statute to determine whether there has been a breach of the lease. Any argument that any such breach has been waived, was acquiesced or consented to or enforcement of which is subject to a defence of estoppel must be determined separately by the courts. At best, Mr Mehra's assertion could found a claim of waiver or estoppel and is no defence to the original allegation that there has been a preceding breach.
11. As to paragraph 17, there is a clear breach in that there is no direct covenant between the tenant and the Applicant. Further, it is not disputed that the Respondent failed to give 30 days' written notice of the tenancy. The Respondent's primary argument that there was an exemption not reflected in the copy lease in front of the Tribunal has already been disposed of in paragraph 5 above.
12. Mr Mehra asserted that the Applicant had long been aware of the Respondent's sub-lets, because they had been doing it for ten years and because the Applicant and their agents had seen and interacted with the tenants over the years. He questioned the Applicant's good faith and made vague assertions that their action was a cover-up for their inaction in respect of disrepair which had caused leaks, for failing to get tenant agreement to major works and for over-charging for those works. In particular, he asserted that, following the Applicant's solicitors' letter of 14<sup>th</sup> February 2006 in which they asked for details of the latest sub-letting in order to ensure that there was no breach of covenant, someone from the Respondent had telephoned the solicitor, Joanne Compton, and satisfied her that there was no breach.

13. Again, Mr Mehra did not have anything approaching sufficient evidence to support his assertions. Further, even if he could establish them, they would amount at best to a defence of waiver with which this Tribunal is not concerned for reasons set out above.
14. As to paragraph 18, Mr Mehra asserted that the Respondent did inform the Applicant of the tenancy agreement by letter dated 27<sup>th</sup> July 2007. The letter did not purport to have been written in order to comply with paragraph 18, instead being predominantly concerned with alleged leaks. However, it did purport to enclose a copy of the tenancy agreement.
15. The Applicant claims not to have seen the letter of 27<sup>th</sup> July 2007 until they received the Respondent's bundle for the hearing. Ms Conlan went so far as to assert that the letter had not even been sent. The Tribunal is satisfied that Ms Conlan is correct for the following reasons:-
  - (a) Mr Mehra asserted that the letter had been written by a Mr Matthew, based in India where the Respondent company's parent company is registered. There was no witness statement or anything else from Mr Matthew on this or any other issue.
  - (b) The evidence is overwhelming, and it was conceded by Mr Mehra, that there are substantial communication difficulties between the Respondent in India and here in the UK. The Tribunal papers and other correspondence have taken considerable time to reach the relevant people in India so that replies come much later. On the Respondent's case, the only exception would appear to be that the tenancy agreement was signed, sent to India and returned as an enclosure to a letter from the Respondent all on the same day. This is not credible in the circumstances of this case. According to Mr Mehra, the tenancy agreement was entered into on behalf of the Respondent by managing agents called Woodvale under standing instructions. There would appear to be no reason why Woodvale would urgently inform the parent company in India of the new tenancy agreement, let alone doing so on the same day.
  - (c) On 26<sup>th</sup> July 2006 the Respondent wrote to the Applicant's solicitors stating that the property was not being sub-let and would not be sub-let. It is incredible that the Respondent would then write a directly contradictory

letter the following day, even if it turned out to be more truthful. Mr Mehra asserted that the letter of 26<sup>th</sup> July 2007 was written by a Mr Bohnke, the Respondent company's representative in the UK who did not know what was going on. Since Mr Bohnke purported in a number of letters to the Applicant's solicitors to be acting on behalf of the Respondent and wrote from the Respondent company's then registered address, this is also incredible.

(d) There is other correspondence which purports to be from the Respondent but which is equally dubious. In a letter dated 17<sup>th</sup> November 2006 the Respondent purported to quote from a letter dated 9<sup>th</sup> August 2006 which the Applicant claims never to have received. The quote included the sentence, "Thank you for your letter of 10 November 2006." A letter has subsequently been produced bearing the date of 9<sup>th</sup> August 2006 but the content bears no relation to any part of that quoted in the letter of 17<sup>th</sup> November 2006.

16. Given the Tribunal's finding that the Respondent's purported letter of 27<sup>th</sup> July 2007 was not sent, the Tribunal must also hold that there has been a breach of paragraph 18 of the Fourth Schedule to the lease because there was no other purported notice of the sub-letting.

#### *Other defences*

17. The Respondent's Grounds of Opposition of Application made a number of other points which were said to constitute defences to this application. Mr Mehra expanded on them in submissions. These included substantial reference to events which, at best, could constitute waiver, acquiescence or estoppel. For reasons already given above, the Tribunal is not concerned with such issues.

18. The Respondent asserted that paragraphs 14(1), 17 and 18 of the Fourth Schedule to the lease are concerned with assignments. This is true but they are equally clearly concerned with underlettings as well.

19. The Respondent asserted that a letter dated 4<sup>th</sup> September 2001 from the Applicant's solicitors conceded that paragraphs 14(2) (*sic*) and 17 did not apply to tenancy agreements. In fact, that letter asserted that any underletting should

comply with paragraphs 14(1) and 17, i.e. it supports the Applicant's case, not the Respondent's.

20. Mr Mehra pointed to a handwritten note on a subsequent fax which stated, "You will see that insertion of the covenant not relevant in this case as tenancy is for 12 months less one day." However, this pre-dates the current lease extension and refers to the terms of the previous lease so that it is not relevant to this application. Mr Mehra asserted that it was common sense that a lease extension would replicate all the terms of the previous lease in exactly the same form. Unfortunately, he is showing his ignorance of landlord and tenant law on this point as lease extensions do not necessarily follow the same form – indeed often the occasion of the extension is used to alter the terms of the tenancy rather than keep them in identical form.
21. The Respondent asserted that paragraphs 17 and 18 are unreasonable for sublettings in that it was impracticable to have 30 days' or one month's notice of assured shorthold tenancies, which may be for a term of as little as six months, before and after creation. The Tribunal has no opinion on whether this assertion is correct or not, but is satisfied that it is totally irrelevant. The Tribunal must consider the terms of the lease as they are, not as they would like them to be.
22. Mr Mehra asserted that the Applicant and their managing agents had handled these proceedings with "great casualness", that their management of the property was equally bad and that they were, in summary, "a bunch of jokers". The evidence he presented to the Tribunal did not even begin to justify such strident language, bordering on the offensive. The Respondent's own case, taken at its highest, was, in Mr Mehra's own words, that its right hand did not know what its left was doing, resulting in its representative in the UK writing letters which were untruthful and directly contradicted other correspondence coming from the parent company in India. The Tribunal has no hesitation in rejecting Mr Mehra's submissions.

#### *Costs*

23. The Applicant applied for their costs of these proceedings, up to the maximum £500 allowed, under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. Ms Conlan asserted that the late delivery of the



Respondent's bundle and Mr Mehra's witness statement constituted the relevant frivolous, vexatious, abusive or otherwise unreasonable behaviour justifying such a costs order. In fact, the Tribunal is satisfied that the delivery of these items, even if late, did not result in the Applicant incurring costs over and above what they would otherwise have incurred in any event in pursuing this application. Therefore, the application for costs is rejected.

*Conclusion*

24. The Tribunal has determined that the Respondent has breached the covenants contained in paragraphs 14(1)(b), 17 and 18 of the Fourth Schedule to the lease.

Chairman.....*N.K. Nicol*.....

Date 25<sup>th</sup> October 2007