



Residential  
Property  
TRIBUNAL SERVICE

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

**LON/00AZ/LBC/2009/0028**

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**Premises:** 2 CALDECOURT PLACE  
WASTDALE ROAD  
LONDON  
SE23 1GA

**Applicant (Landlord):** HYDE HOUSING ASSOCIATION LTD

**Represented by:** MS N MUIR - COUNSEL

**Also in Attendance:** MS E DOWELL - INCOME OFFICER

**Respondent (Leaseholder):** MR G D ST GEORGE GOULBOURNE

**Tribunal:** MS F DICKIE (BARRISTER) - CHAIR  
MR T N JOHNSON - FRICS  
MR O N MILLER BSC

**Date of Hearing:** 06/07/09

**Date of Decision:** 17/08/09

**THE RESPONDENT IS STRONGLY ADVISED TO TAKE LEGAL ADVICE  
ABOUT THE EFFECT OF THIS DECISION.**

**Summary of Determination**

1. The Tribunal finds that the Respondent is in breach of the covenants contained in Clause 3(17)(b) and in Paragraph 1 of the First Schedule of the Lease, in that the premises have been sublet and are not being used for Live/Work purposes.

**Preliminary**

2. The property in question is known as 2 Caldecourt Place, Wastdale Road, London SE23 ("the premises") and is one of a number of "Live/Work" Units developed by the Applicant in 2005. It is comprised of residential accommodation and business space in a single integrated unit. The Respondent purchased the leasehold interest in the premises on 13<sup>th</sup> August 2007. The conditions of the Lease include a user covenant requiring the premises to be used for Live/Work purposes, and a prohibition on subletting. The Applicant seeks a determination under s.168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of covenants under the Lease have occurred. The essence of the Applicant's case is that the premises have been sublet without consent and used solely for residential purposes.
3. In correspondence dated 25<sup>th</sup> June 2009 the Applicant sought to add to its Application a request for a determination that a breach of the covenant to pay service charges had taken place. No application had been made under s.27A of the Landlord and Tenant Act 1985 in respect of those service charges. The Applicant did not have evidence at the hearing to support those costs and the Tribunal refused permission to amend the Application to include this alleged breach.
4. Ms Muir on behalf of the Applicant confirmed that the Application had been served on the Respondent at the premises. The Applicant's position was that the Respondent had never provided an alternative address, had always maintained to the Applicant that he lives there, and is understood to collect post from there.

The Respondent did not attend the hearing and had not submitted any evidence in response to the Application.

**The Lease**

5. The Applicant claims the Respondent has breached the following Clauses of the Lease:

3(6)(a) Not to cut maim or injure any of the structural parts roof or walls of the premises or make any alterations or additions to the exterior of the premises or any structural alterations or structural additions to the interior of the premises nor in anyway to interfere with the outside of the building nor to remove any of the Landlords fixtures from the premises.

3(6)(b) Not to make any alterations or additions of a non-structural nature to the interior of the premises without the previous written consent of the Landlord, such consent not to be unreasonably withheld.

3(17)(a) Not to underlet or part with possession of part only of the premises

3(17)(b) Not to underlet the whole of the premises without the prior written approval of the Landlord, such consent not to be unreasonably withheld. Any such permitted underletting to be subject to the terms of this Lease.

THE FIRST SCHEDULE above referred to  
MUTUAL COVENANTS

1. Not to use the Premises nor to permit the same to be used for any purpose whatsoever other than as a live-work unit as provided in conditions 14 to 18 inclusive of the Planning Permission dated 5<sup>th</sup> June 2001 issued by the London Borough of Lewisham in relation to Plan numbers DC/00/46528, DC/00/446528A and DC/00/46528B and in particular (a) not to use the residential part of the premises for any purpose except as a private residential apartment ancillary to the use of the business part of the premises and (b) not to use the business part of the premises for any purpose other than for the operation of a business in accordance with the said planning conditions and (c) subject to the terms of the Clause 3(17)(c) hereof not to dispose of the premises other than as an integrated live/work apartment.

## **Jurisdiction**

6. The tribunal's jurisdiction is to make a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 only in relation to a "long lease of a dwelling" which, by virtue of section 169(4) does not include a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies (i.e. a business tenancy). The meaning of "dwelling" imported from the Landlord and Tenant Act 1985 is "a building or part of a building occupied or intended to be occupied as a separate dwelling...". Accordingly since the tribunal finds that the property is in fact being used only as a dwelling, this definition is for the time being satisfied.

7. Section 23 of the 1954 Act provides that that Part II applies:

"... to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes"

It is the purpose for which the premises are being occupied at the relevant time which determines whether the Act applies or not. Furthermore, the tenant must occupy those premises for those purposes. Whether or not the tenancy was originally one to which the 1954 Act applied, the tribunal is satisfied on the evidence that the tenant is not in occupation and, even if he is, that no business use is currently being made of the premises by him (or indeed others).

Accordingly the tribunal finds that the 1954 Act does not apply, and that it has jurisdiction under s.168(4).

## **The Hearing**

8. The tribunal saw copy correspondence from the Applicant's solicitors to the Respondent, the witness statement of Ms Erica Dowell, Housing Officer employed by the Applicant, and a note of her telephone attendance on the Respondent dated 1<sup>st</sup> July 2008. Ms Dowell also gave evidence in person.

9. Ms Dowell said that together with a surveyor she had visited numbers 1,2 and 13 Caldecourt Place on the same day in 2007, but the surveyor did not produce a report or drawing. She remembered that the business unit in no. 13 was divided, but in no.1 it was not. She could not remember whether there was a partition in

the subject premises when she inspected, but she clearly recalled that the business area was being used as a bedroom, there being a double bed, a single bed and a wardrobe in the workspace. Ms Dowell said she took notes at the inspection, which were sent to the solicitor acting for the Housing Association and formed the basis of her witness statement (in which she said partitioning had been erected in the centre of the business area). She did not bring the notes at the hearing. Ms Dowell said she saw a man and a woman living in the subject premises with 3 children, and that these adult tenants told her at the inspection that they were renting the property from the Respondent, were not working and had claimed housing benefit.

10. Ms Dowell said she had not been back to the property since that inspection, but that her colleague had done so on 16<sup>th</sup> June 2009, when the residents of no.2 confirmed they had been there for the last 3 years. Ms Dowell also gave evidence of a telephone conversation she had with the Respondent on 1<sup>st</sup> July 2008 in which he had admitted that the property is rented. She also recalled a telephone conversation a few weeks prior to that in which the Respondent told her he lived in the premises on a Live/Work basis. Ms Dowell gave evidence that she had received information by telephone from Lewisham Council's Housing Benefit Department that housing benefit was being claimed in respect of these premises, and not in the name of the Respondent. She could not be sure of the date of this enquiry, or whether it was before or after the Respondent purchased the flat. Ms Dowell confirmed that no consent to subletting had been given by the Applicant landlord, and that no such consent would be given to subletting other than for Live/Work purposes.

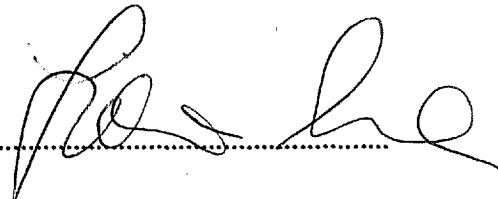
### **Determination**

11. The burden of proof is on the Applicant to demonstrate that the Respondent is subject to the relevant covenants, and that there has been a relevant breach. The test the tribunal must apply is the balance of probabilities. Ms Dowell's evidence as to whether the business space had been sub-divided or altered in any way was weak. The Applicant alleged that the Respondent has breached Clauses 3(6)(a) and 3(6)(b) by altering the premises so that the business part of the property resembles a bedroom and part of the living area. However, Ms Dowell's oral

evidence at the hearing did not support that allegation that a partition had been erected and the tribunal was not persuaded to the required standard that any breach of Clauses 3(6)(a) and 3(6)(b) had occurred.

12. Having considered the evidence carefully, and whilst acknowledging the shortcomings regarding Ms Dowell's recollection regarding the erection of a partition, the tribunal is nevertheless satisfied on the balance of probabilities that no business use is being made of the premises, which have indeed been sublet solely for residential use. The Respondent has asserted to Ms Dowell that he continues to live in the premises. However, there is no other evidence of joint occupation. The evidence obtained by Ms Dowell at and since the inspection contradicts this statement. The tribunal considers it more likely than not that the Respondent has sublet the whole of the premises, and has done so without the prior written approval of the Applicant.
13. The tribunal is satisfied that the Respondent is subject to the relevant covenants in respect of user and against subletting without consent. Accordingly it finds that the Respondent is in breach of the covenants contained in Clause 3(17)(b) and in Paragraph 1 of the First Schedule of the Lease.

Chairman

A handwritten signature in black ink, appearing to read 'F Dickie', written over a horizontal dotted line.

Ms F Dickie

Date

17<sup>th</sup> August 2009