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**LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL**

Case Reference: CHI/00MW/LBC/2013/0008

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND
LEASEHOLD REFORM ACT 2003**

Applicant: PAUL DENHOLM AND SUSAN BROWELL

Respondent: DAVID JOHN HOLMES

**Property: FLAT 1 LAINSTON GRANGE,
APPLEY RISE
RYDE, ISLE OF WIGHT
PO33 1LF**

Date of Hearing 1ST MAY 2013

Leasehold Valuation Tribunal

Mr D. R. Whitney LLB(Hons)
Mr N. I. Robinson FRICS

Introduction

1. This matter concerns an application by the Freeholder of Lainston Grange, Appley Rise, Ryde, Isle of Wight PO33 1LF (“the Property”) that the Respondent, who is the Leaseholder of Flat 1 (“the Flat”) at the Property, has breached the terms of his lease. The Respondent is a leaseholder under a lease dated 22nd May 2013.
2. The Applicant made application dated 4th January 2013. The application alleges that in breach of the terms of the lease the Respondent has let the Flat as holiday lettings and that this has caused the insurance premium payable to increase. It is alleged by the Applicant both the holiday lettings and the increase in insurance premium are in contravention of the lease.
3. The Tribunal issued Directions on 16th January 2013. The Respondent was to file a statement of case by the 8th February 2013. The Applicants were to file and serve a bundle by 11th March 2013. The Applicants did file a bundle upon which the Tribunal replied. The Respondent’s solicitor wrote to the Tribunal on 19th March 2013 seeking a postponement of the hearing as the Respondent together with other leaseholders were exercising their rights to purchase the freehold interest from the Applicants. The Applicants via their solicitors objected to this application and the Tribunal directed that the Application would proceed to be determined. No evidence or submissions in reply to the Applicants have been filed.

The Law

4. The relevant law for the Tribunal to apply is set out in section 168 of the Commonhold and Leasehold Reform Act 2002 as set out below:

Section 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

DISCUSSION

5. The Applicant alleges that the Respondent who purchased his flat in or about November 2010 has used it for holiday letting. The Applicant relies upon a questionnaire sent to the Respondent by the Applicants agent 42 Properties Limited in which the Respondent confirmed that the property had been let on a holiday let basis. The Applicant said his agents drew to the respondents attention the fact that the buildings insurance which had been in place did not cover such use of the Flat.
6. The Applicant relies on the terms of the lease dated 22 May 1984 under which the Respondent owns his Flat. A full copy of the lease was provided to the Tribunal but the relevant covenants are:

Clause 2:

“The Tenant hereby covenants with the Lessors and with and for the benefit of the owners and lessees from time to time during the currency of the term hereby granted of the other flats comprised in the Estate that the Tenant and the persons deriving title under him will at all times hereafter observe the restriction set forth in the First Schedule hereto.”

And paragraphs 1 and 2 of the First Schedule:

“1. Not to use the flat nor permit the same to be used for any purpose whatsoever other than as a private dwelling house in the occupation of one family only nor for any purpose from which a nuisance can arise to the owners, lessees or occupiers of the other flats on the estate or in the neighbourhood nor for any illegal or immoral purpose and not to use the garden or permit the same to be used for any purpose whatsoever save for a private garden in connection with the flat.”

“2. Not to do or permit to be done any fact or thing which may render void or voidable any Policy of Insurance of any flat or garage on the estate or may cause an increased premium to be payable in respect thereof.”

7. The Applicant said that the Respondents use as holiday lettings was in breach of paragraph 1 of the First Schedule. He relied on Caradon District Council v Paton and bussell [2001] CA 33 HLR 34 and Walker v. Kinley [2008] EWHC 370. The Applicant stated that these cases supported his contention that use as a holiday let was not use as a private dwelling house in accordance with paragraph 1 of the First Schedule.
8. The Applicant produced correspondence from 42 Properties Limited which indicated that cover for “holiday lets” could be added to the insurance policy in place on the property but an additional premium of “£129 (Approx)p.a.”.
9. In the correspondence the Respondent indicates that the advice he has received is that he can let the property as a “holiday let” on short term lets for people visiting the area on holiday. Subsequently the respondent asserts he can see no point responding to correspondence as he with other leaseholders are exercising their rights to purchase the freehold.

DECISION

10. The Tribunal determines that the Respondent is in breach of paragraphs 1 and 2 of the First Schedule and which he covenants to comply with under clause 2 of his lease dated 22 May 1984.
11. The Respondent does not deny that he is letting the property on short term holiday lets. The Tribunal has considered the cases to which it was referred. The Tribunal determines that lettings of this type do not comply with the requirement to use the premises as a "private dwelling house". Such lettings are of a commercial nature and are not allowed under this lease.
12. There is no evidence in rebuttal by the Respondent that the insurance premium would be greater if it was to cover "holiday lettings". In the Tribunal's judgement it is likely that such lettings may cause an increased premium to be charged. As a result the breach is established.
13. Whether the Respondent and other leaseholders are purchasing the building from the point of view of this application is irrelevant. The Applicant remains the freeholder and is entitled to make such an application.

Signed

David R. Whitney LLB (Hons)

Lawyer Chair

2nd May 2013