



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : **CAM/38UE/LBC/2014/0014**

Property : **2A, Stallpits Road, Shrivenham,
Oxon, SN6 8BG**

Applicants : **Mr D M Chapman & Mrs C M
Williams**

Representative : **In Person**

Respondent : **Mr B Gay**

Representative : **In Person**

Type of Application : **Determination of an alleged breach
of covenant**

Tribunal : **Mrs H C Bowers MRICS
Mr J Sims LLM
Mrs N Bhatti**

**Date and venue of
Determination** : **Tuesday, 25th November 2014 at
Swindon Magistrates Court,
Princes Street, Swindon, SN1 2JB**

Date of Decision : **25th November 2014**

DECISION

The Tribunal finds that

- The Respondent is not in breach of Schedule 4 Part II (9) 9 of the subject lease.
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Background:

- (1) The Applicant landlords seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”), that the Respondent tenant is in breach of the lease dated 6th October 2004 under which 2A, Stallpits Road, Shrivenham, SN6 8BG (“the subject property”) is held.
- (2) An application was made on 16th September 2014, requiring a determination of a breach of covenant. Directions were issued on 19th September 2014.
- (3) It is maintained that the Respondent is in breach of the subject lease in respect of a sub-letting or parting with part of the subject property, described in the lease as the Demised Property.
- (4) Written representations were received from both parties. A hearing was arranged on Tuesday 25th November 2014 at 11.00 am, in Swindon Magistrates Court. Mr Chapman attended and was accompanied by Mrs Bowron. Mr Gay was also in attendance and was accompanied by he Mrs Farrand, Mrs Wood and Dr Monjardez. In coming to its decision the Tribunal had consideration of the written submissions and evidence, its inspection and the evidence and oral submissions made by both parties at the hearing. The position of each party is set out in summary below.

The Law:

- (5) Section 168 of the 2002 Act provides 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 (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)
(4) A landlord under a long lease of a dwelling may make an application to [the appropriate tribunal] for a determination that a breach of a covenant or condition in the lease has occurred.”*

Terms of the Lease:

(6) The "subject lease" is dated 6th October 2004 and was originally between Richard William Plummer and Valerie Elizabeth Plummer as "the Lessor" and Byron Scott Gay as "the Lessee". The Land Registry extract against title number ON291211 indicates that the Applicants acquired the freehold interest of the building in which the subject property is located on 23rd April 2010.

(7) Schedule 4 sets out the Lessee's covenants under the lease. The specific clause that is claimed to have been breached is Schedule 4, Part II (9). This states that the lessee covenants "Not to assign, transfer, sublet or part with possession of part only of the Demised Premises".

Inspection:

(8) Prior to the hearing the Tribunal had an opportunity to make an internal inspection of the subject property in the company of Mr Gay, his partner Mrs N Wood, Dr G Monjardez and Mrs Farrand. Mr Chapman attended the inspection together with Mrs Bowron.

(9) The internal arrangements of the subject property comprise a kitchen leading into an open plan living space with a dining area and a cloakroom on the ground floor and a bathroom and two double bedrooms on the first floor. There appeared to be no separate food preparation or living areas. The bedroom used by Dr Monjardez is a double room with no lock to the door. All the occupants of the house share the bathroom.

Submissions:

Applicants' Case

(10) Mr Chapman explained that in Spring 2013, the Applicants had been aware that there was someone was residing in the subject property in addition to Mr Gay. At the time Mr Gay had been living by himself and was away for long periods of time. The Applicants had become aware of noises emanating from the subject property. A second lodger occupied the property in August 2013 and Dr Monjardez was the third lodger.

(11) There have been discussions between the parties. The Applicants had examined the lease and having taken advice, concluded that the Respondent was in breach of his lease. Mr Chapman had been in contact with the insurance company, Direct Line and had put a hypothetical situation to them about a lodger residing in the property. He had been informed that the presence of a lodger would invalidate the insurance. There were no supporting documents as to this communication. It was explained that the Applicants had the responsibility for insuring the property and recovering part of the premium from the Respondent.

(12) Mr Chapman stated he was unable to assist the Tribunal in the interpretation of the wording of sub-letting or parting with possession, but clarified it was that aspect of the 4th Schedule Part II (9) that was to be considered in respect of Dr Monjardez's occupation.

(13) Mr Chapman disputed Mr Gay's statement that he was around a lot of the time. In his opinion Mr Gay was away for several weeks at a time. Mr Chapman wondered whether Mrs Wood would feel as comfortable with the situation if there were a male lodger. He also suggested that if the Respondent was receiving a market rent for the room, this would be an indication of a business arrangement rather than a family arrangement.

Respondent's Case

(14) Mr Gay stated that he had been advised that by having Dr Monjardez as a lodger was not a breach of the lease. Dr Monjardez's occupation does not amount to a lease, as she does not have a defined area for her exclusive occupation. The living areas are shared and it is possible for each of them to enter the other's bedroom. It was confirmed that there are no locks on the room occupied by Dr Monjardez. Mr Gay was surprised by the insurance issue, as this had not arisen previously. He considered that the property was more secure by having someone in the house when he was away on business.

(15) In response to questions from the Tribunal Mr Gay stated that there was no written agreement and that if necessary, Mr Gay could insist on the bedrooms being swapped. The domestic arrangements with regards to cleaning and cooking are shared. It was explained that the occupants live in the property as a household.

(16) It was acknowledged that Dr Monjardez paid a rent for her room and that this aspect was a business arrangement.

(17) Following the Tribunal's questions to the Respondent, Mr Chapman sought confirmation as to the domestic arrangements concerning the previous lodgers and any future lodgers. Mr Gay stated it would be the same arrangements.

(18) The Tribunal heard from Dr Monjardez who confirmed the arrangements as described by Mr Gay. Her occupation had commenced in September 2014 and her academic year runs until July 2015. She shares lifts to her place of study with Mrs Wood and considers that her relationship with Mr Gay and Mrs Wood, is that of housemates, rather than a landlord and tenant situation. The only space allocated to her was the bedroom.

Tribunal's Findings:

(19) The issue for the Tribunal to initially determine is the nature of Dr Monjarez's occupation. In the seminal case of *Street v Mountford* [1985] A.C. 809, the three essential ingredients of a lease were listed as rent, term and exclusive possession. Mr Gay acknowledged that a payment was made for the room; no issue was taken as to any term of the occupation. So the remaining issue was whether Dr Monjarez has exclusive possession. From the evidence of both Mr Gay and Dr Monjarez the Respondent retained rights over the room, including the right to swap bedrooms if desired. There was no evidence from the Applicants to counter this position. Accordingly, the Tribunal determines that Dr Monjarez does not have exclusive possession of any area within the subject property. Therefore she has no lease.

(20) The Tribunal also needs to consider whether the Respondent has parted with possession. This is allied to the concept of exclusive possession. Again from the evidence presented by the Respondent, and given there was no evidence on this point from the Applicants, the Tribunal determines that the Respondent has not surrendered his possession of any of the areas of the subject property.

(21) In consideration of the submissions made by Mr Chapman in respect of the insurance cover for the property. We had no specific evidence on this point. However, even if such evidence was forthcoming, this does not assist the Tribunal in making its decision as to whether there had been a breach of Schedule 4 Part II (9).

(22) The nature of Dr Monjarez's occupation is that of a lodger or a licensee. From the case of *Daly v Edwardes* (1900) 83 L.T. 548, and affirmed in the House of Lords under *Edwardes v Barrington* (1901) 85 L.T. 650, it was held that occupation by a licensee was held not to be a breach of covenant not to assign, demise or otherwise part with possession. Following this precedent, this Tribunal determines that the Respondent is not in breach of Schedule 4 Part II (9) of the subject lease.

Appeal Provisions

(23) A person wishing to appeal against this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office that has been dealing with the case.

(24) The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

(25) If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to admit the application for permission to appeal.

(26) The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result that the person is seeking.

Name: H C Bowers

Date: 4th December 2014