

601



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

Case Reference : **LON/00AY/LBC/2014/0063**

Property : **190 PULLMAN COURT,
STREATHAM HILL, LONDON SW2
4TA**

Applicant : **PULLMAN COURT (STREATHAM)
MANAGEMENT COMPANY LTD**

Representative : **THACKRAY WILLIAMS LLP**

Respondent : **DR BASSIMA AL SALAHI**

Representative : **N/A**

Type of Application : **S168 COMMONHOLD AND
LEASEHOLD REFORM ACT 2002**

Tribunal Members : **Ms L Smith (Tribunal Judge)
Mr A Manson, FRICS**

**Date and venue of
Hearing** : **1 October 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **13 October 2014**

DECISION

Decisions of the Tribunal

- (1) The Tribunal is satisfied that the Respondent is in breach of the Lease by virtue of the unauthorised underletting, failure to repair and nuisance caused to other occupiers
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision

The application

1. The Respondent is the lessee of Flat 190, Pullman Court, Streatham Hill, London SW2 4TA ("the Property") pursuant to a lease dated 30 November 1978 ("the Lease"). The Respondent acquired the Lease in 1999.
2. The Applicant is the company which manages the Property on behalf of the freeholder (and is named as such in the Lease). The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), that the Respondent is in breach of the Lease as follows:-
 - (1) Unlawful assignment or subletting contrary to paragraphs 11, 15 and 18 of the Fourth Schedule to the Lease.
 - (2) Failure to repair the Property contrary to paragraphs 5, 19 and 20 of the Fourth Schedule to the Lease and paragraphs 7 and 15 of the Sixth Schedule to the Lease
 - (3) Causing nuisance to other occupiers of adjacent properties by noise from those in occupation of the Property contrary to paragraphs 1 and 14 of the Fourth Schedule to the Lease.-
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was ably represented by Miss Foskett of Counsel who appeared with a representative from her Instructing Solicitor and Mr A McKeer who is the managing agent of the Property. The Respondent did not attend. This was not surprising since the Respondent appears to live in Syria. The Tribunal satisfied itself that the application and supporting evidence had been served on the Respondent via e mail and that copies of documents had also been sent to the Property and to another address in the UK which appears on the office copy entries for the Property. There is no mortgagee. Those in occupation of the Property are aware of the application following a site visit made by Mr McKeer in August. They did not attend the hearing.

The background

5. The Property is a 2 bedroom flat within a purpose built development.
6. The Tribunal was not asked to inspect the Property and did not consider it necessary to do so. The Tribunal had before it photographs

produced by Mr McKeer taken during his visit to the Property in August.

The issues

7. The issue for the Tribunal's determination is whether the Respondent has breached the covenants in the Lease in the way alleged in the application and evidence.

The Tribunal's determination

8. The Tribunal considers that there is ample evidence of all the breaches alleged.

Reasons for the Tribunal's determination

Unauthorised assignment or underletting

9. The clauses relied on by the Applicant are as follows:-

Paragraph 11 of the Fourth Schedule to the Lease:-

"Not to use the Premises or permit the same to be used for any purpose whatsoever other than as a self contained private dwelling for residential purposes only for one family in single occupation"

Paragraph 15 of the Fourth Schedule to the Lease:-

"Not to assign underlet or part with or share possession or occupation of part only of the Premises"

Paragraph 18 of the Fourth Schedule to the Lease:-

"Within three months 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..."

10. Mr McKeer provided a statement in which he set out details of his visit to the Property on 7 August 2014. He also produced a file note of that visit and produced photographs taken on that occasion. During his visit he spoke with the occupier, Mr Youssef Samake. Mr Samake admitted to being in occupation of part of the Property. He lived in one room and the other is occupied by a Mr Dembili. Mr Samake indicated that occasionally Mr Dembili's partner and 2 children also spent time in the Property. Mr Samake is not related to Mr Dembili. Mr Samake told Mr McKeer that he paid rent to an account in the name of a Mr Sheikh-Warak and told Mr McKeer that, at the request of the owner, he also paid service charges and he provided receipts to that effect which tallied with payments of service charge which the Applicant had received. He also told Mr McKeer that he had some repairs carried out to the Property and produced receipts. Mr McKeer was not given access to

the rooms in the Property apart from the kitchen and bathroom but was informed that Mr Samake occupied one of the principal rooms (lounge and main bedroom) whilst Mr Dembili occupied the other. Both had individual locks on the door. The second bedroom also had an individual lock on the door but was apparently currently unoccupied. Mr Grosse (the caretaker and tenant of Flat 187) informed Mr McKeer that at times there appeared to be up to 7 people in occupation of the Property.

11. The Tribunal is satisfied that the Property is being sublet and is being occupied by persons who are not part of one family. There has been no notice of subletting. The subletting is therefore unauthorised.

Failure to repair the Property

12. The clauses of the Lease relied upon by the Applicant are as follows:-
Paragraph 5 of the Fourth Schedule to the Lease:-
“To repair and keep the Premises and all additions thereto ... in good and substantial repair and condition at all times during the term including the renewal rebuilding and replacement forthwith of the whole or any worn or damaged parts thereof”

Paragraph 19 of the Fourth Schedule to the Lease:-
“To keep all baths sinks lavatories cisterns waste soil and other pipes and media connected to the Premises to the extent only that they pass through the Premises clean and open and not to throw refuse therein...”

Paragraph 20 of the Fourth Schedule to the Lease:-
“Not to do or permit anything in or upon the Premises which may render any extra premium to be payable for the insurance of the block of flats or any part thereof....”

Paragraph 7 of the Sixth Schedule to the Lease:-
“...not in any way to cause obstruction or unpleasant odours in any waste or soil pipes”

Paragraph 15 of the Sixth Schedule to the Lease:-
“not to alter any sanitary water gas electrical heating or ventilation apparatus”

13. The Applicant produced a schedule of incidents which showed that between May 2009 and April 2013, there were 7 water leaks from the Property into Flat 187 below (as confirmed by Mr Grosse – the occupier of that flat - to the Applicant). Those included some escape of foul water and evidence that waste pipes in the Property had been altered which had caused some of the incidents (although those alterations may since have been reversed) or pipes had become blocked. Mr McKeer showed the Tribunal photographs of the Property, particularly the bathroom of the Property and drew the Tribunal’s attention to areas which were in disrepair and likely to cause further water leaks if those

areas were not repaired. The Applicant asserts that the recurrent risk of water leaks may well cause an increase in insurance premiums if repairs are not carried out. The Tribunal accepts that assertion.

14. The Tribunal is therefore satisfied that the Respondent is in breach of the clauses above.

Noise Nuisance

15. The clauses of the Lease relied upon by the Applicant are as follows:-

Paragraph 1 of the Sixth Schedule to the Lease:-

“Not to do or permit to be done whether by agents employees or visitors... any act to the disturbance damage or annoyance of the Landlord the Company or the tenants or the occupiers of any of the flats....”

Paragraph 14 of the Sixth Schedule to the Lease:-

“To keep all floors in the flat covered with carpet or other suitable materials so as to prevent the penetration of sound into other flats”

16. When Mr McKeer visited the Property, the hall area and the kitchen and bathroom had laminate floor coverings. Although he could not gain access to the other living rooms, Mr Samake (one of the occupiers) confirmed to him that the laminate floor had been put down throughout the Property approximately 2 years ago. Mr McKeer accepted that laminate flooring might be judged to be suitable for areas like the kitchen and bathroom where there was not heavy traffic. He did not accept though that it would be judged a suitable material for other areas. He supported this view by the fact that Mr Grosse had complained to the Applicant of noise coming from the Property, particularly “constant coming and going” which had caused Mr Grosse “great disturbance and interruption of his sleep”. He could also hear a new baby crying.
17. Although the clause in the Lease provides that flooring may be other than carpeting where that is suitable, it is clear from Mr McKeer’s evidence and the complaints from Mr Grosse which the Applicant has received that the flooring in the Property is not covered with suitable material and is causing noise nuisance to other occupiers, particularly Mr Grosse who lives in the flat below the Property.

Name: Ms L Smith

Date: 13 October 2014

APPENDIX 1

Appendix of relevant legislation

Section 168 of the Commonhold and Leasehold Reform Act 2002

(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,
- (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.

.....
(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 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.