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

**Case Reference** : CHI/45UE/LBC/2015/0008

**Property** : 4, Bowman Court, London Road,  
Crawley RH10 8XG

**Applicant** : David Glass

**Representative** : Spalter Fisher LLP, solicitors

**Respondent** : TBM Portfolio Limited

**Representative** : Mr B J Hurst, Director

**Type of Application** : Alleged breach of covenant: section 168  
Commonhold and Leasehold Reform Act  
2002

**Tribunal Member(s)** : Judge D. Agnew

**Date and venue of CMH** :

**Date of Decision** : 9<sup>th</sup> July 2015

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ORDER AND DETERMINATION

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## ORDER AND DETERMINATION

### Summary:

1. The Tribunal orders under Rules 9(3)(e) and 9(7) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that, for the reasons set out below, the Respondent be debarred from taking any further part in these proceedings and that the Tribunal may proceed summarily to determine all or any of the issues.
2. The Tribunal determines, under section 168 of the Commonhold and Leasehold Reform Act 2002, that the Respondent has breached a covenant contained in its lease of 4, Bowman Court, London Road, Crawley RH10 8XG ("the Property") by subletting the Property to Ms Lina Skupeikate.

## REASONS

### Background

3. On 29<sup>th</sup> April 2015 the Applicant applied to the Tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002, for a determination that the Respondent had breached the covenant in its lease of the Property by subletting the premises to a Ms Lina Skupeikate contrary to sub-clause 3(8)(a) of the Respondent's lease.
4. Directions were issued on 1<sup>st</sup> May 2015 providing for the determination of the application on the basis of written representations and without an oral hearing unless either party objected within 28 days of receipt of the Directions.
5. No response having been received from the Respondent, the Applicant's solicitors prepared the determination bundle on 8<sup>th</sup> June 2015. The following day, Mr Barry Hurst, Director of the Respondent company emailed the Tribunal to say that he had just received the bundle but not previous papers. He gave two addresses for his company, neither of which were the address to which the copy of the application and directions had been sent by the Tribunal. Accordingly, the Tribunal gave the Respondent additional time in which to object to a paper determination and to respond to the application.
6. On 15<sup>th</sup> June 2015 the Respondent sent to the Tribunal its statement of case in response to the application and stated that it did object to a paper determination and requested an oral hearing. In response to a query from a Procedural Judge of the Tribunal a supplemental statement was submitted by Mr Hurst which was received by the Tribunal on 8<sup>th</sup> July 2015.
7. I reviewed the file on 8<sup>th</sup> July 2015 and concluded from the documentation that there was no reasonable prospect of the Respondent succeeding in defending the application and that no useful purpose could possibly be served by there being an oral hearing of the

case. For that reason, which I will expand upon hereafter, I have made an order debaring the Respondent from taking further part in the proceedings thus saving the parties and the Tribunal in further fruitless time and expenditure in having an oral hearing. The application has therefore been determined solely upon the documentation supplied by the parties, including the Respondent's statement of case.

### **The Applicant's case.**

8. The Applicant's case is that the Applicant is the freehold owner of Bowman Court and its title is registered under title number WSX 19529 at the Land Registry. An Official Copy of the freehold title was produced and this contained a schedule of notices of leases which included the Property. This records a lease of the Property for 99 years from 1<sup>st</sup> January 1988 dated 25<sup>th</sup> October 1988 registered under title number WSX 136380. It also notes a deed of variation dated 29<sup>th</sup> November 1996 and that a copy of this deed is filed under the leasehold title number given above.
9. A copy of the lease and, at the Tribunal's request, a copy of the deed of variation, were supplied by the Applicant's solicitors.
10. By clause 3(8)(a) of the lease before it was varied the lessee covenanted *"Not to underlet or part with the possession of the whole or any part of the flat nor to assign part only of the flat nor to allow the Tenant's car space to be used otherwise than by the occupier of the flat and his lawful visitors."*
11. By virtue of the deed of variation the new clause 3(8)(a) reads as follows:-  
*"Not to underlet or share possession of the whole or any part of the flat nor to part with possession of the whole of the flat otherwise than by virtue of an assignment of this lease nor to assign part only of the flat nor to allow the Tenants car space to be used otherwise than by the occupier of the flat and his lawful visitors."*
12. The Applicant produced two witness statements from an enquiry agent, Mr Michael Grace, Managing Director of UK Evidence Limited. From what was said to be Data Protection Act compliant information his company had ascertained that a Lina Skupeikaite was listed as the occupant of the Property. On 22<sup>nd</sup> April 2015 one of his agents attended at the Property and spoke to a Jamie Harrison (incorrectly described in the statement as the "girlfriend" of Lina Skupeikaite) who stayed in the property four nights per week.
13. The second witness statement stated that one of Mr Grace's agents attended at the Property on 2<sup>nd</sup> June 2015 and by arrangement spoke with Ms Skupeikaite. She told him she moved into the Property in November 2011 paying initially £500 per month. A rent review letter

## **The Tribunal's determination**

18. The Applicant is the freehold owner of the Property entitled to the benefit of and entitled to enforce the covenants contained in the lease of the Property. The Respondent took an assignment of the lease of the property which is dated 19<sup>th</sup> May 1988 and in respect of which there was a deed of variation dated 29<sup>th</sup> November 1966.
19. By clause 3(8)(a) of the lease, both in its original form and as varied by the deed of variation, there is an absolute prohibition against subletting. It is not a "qualified" prohibition. A "qualified" prohibition would have prohibited subletting without the landlord's consent. Such a qualified prohibition brings into play section 19(1)(a) of the Landlord and Tenant Act 1927 referred to in the Norton case referred to in paragraph 15(c) above and set out in paragraph 17 above. These provisions imply into a "qualified" covenant prohibiting subletting save with the landlord's consent a provision that the landlord's consent is not to be unreasonably refused. However, these provisions do not apply to covenants, as in this case, where there is an absolute prohibition against subletting. Consequently the Respondent's references to the Norton case and the prevention of the landlord putting obstacles in the way of a tenant subletting his property are irrelevant as to whether or not the Respondent has breached the covenant. Under this lease the landlord is not obliged to consider the lessee's request for subletting and does not have to be reasonable in considering such a request. The wording of the covenant is clear. There is a complete prohibition on subletting.
20. The waters are somewhat muddied by clause 3(8)(b) of the lease because, as the Respondent rightly points out, there is a requirement to register any subletting (as well as for other types of dealing with the Property) with the landlord for a fee. Such a provision is otiose if the tenant cannot sublet. However, the requirement to register "any letting" with the landlord cannot confer on the tenant a right to sublet which is expressly prohibited by the previous sub-clause.
21. The Tribunal's jurisdiction under section 168 of the Act is strictly limited to determining whether a breach of covenant has occurred. Thus, even if the lease had given the right to the Respondent to sublet subject to the Applicant's consent, it has no power to grant retrospective consent to sublet as the Respondent requests.
22. The Respondent has admitted that it did sublet the Property to Ms Lina Skupeikaite in November 2011. As there is an absolute prohibition on subletting, it follows that a breach of covenant occurred in November 2011 and the Tribunal so determines. The Respondent has not contradicted the Applicant's evidence that the subletting has continued until at least 2nd June 2015, the date upon which the Applicant's enquiry agent spoke to the subtenant at the Property.

23. The Respondent explains that the Property was acquired as part of a portfolio of 56 properties and that it did not have sight of the lease when it acquired the Property. It was thus ignorant of the covenant against subletting. Even if that is so, it is no answer to the fact that the covenant has been breached. If someone takes the benefit of a lease without knowledge of the terms upon which that lease has been granted they take a risk that those terms may preclude what they wish to do with the property. It is, however, difficult to accept that without due diligence the particular covenant in question could not have been discovered when the Respondent purchased the Property. The deed of variation is noted on the Land Registry entry for the leasehold title and it specifically states that the deed of variation is filed at the Registry. That deed of variation specifically deals with, and only deals with clause 3(8) of the lease, and so the prohibition against subletting should have been readily obtainable. Even if it was not, however, the risk lay with the Respondent in taking on a lease without knowledge of its terms.
24. The Respondent's references to the fees for applying for consent or registering a subletting are irrelevant to the consideration of an application under section 168 of the Act.
25. Whether or not the Applicant is an "aggressive landlord" and does not look after its property portfolio well as the Respondent alleges is irrelevant to consideration of an application under section 168 of the Act which is concerned solely as to whether the lessee has breached a covenant in the lease.
26. For all the above reasons the Tribunal makes a determination that the Respondent has breached the covenant in the lease of the Property prohibiting subletting. It is a clear breach of covenant and, in the light of an express admission that a subletting has taken place, the Respondent has absolutely no realistic prospect of avoiding such a determination on any of the grounds put forward in its statement of case justifying the matter proceeding to an oral hearing as the Respondent wished.

Dated the 9<sup>th</sup> July 2015

Judge D. Agnew

### Appeals

1. A person seeking permission to appeal this decision must make a written application to the Tribunal for permission to appeal.
2. An application must be in writing and must be sent or delivered to the Tribunal so that it is received within 28 days of the date that the Tribunal sends these reasons for the decision to the person seeking permission to appeal.
3. The application must –

- (a) identify the decision of the Tribunal to which it relates
- (b) state the grounds of appeal; and
- (c) state the result the party making the application is seeking.

4. If the person seeking permission to appeal sends or delivers the application to the Tribunal later than the time required in paragraph 2 above or any extension of time granted by the Tribunal –

- (a) The application must include a request for an extension of time and the reason why the application was not received in time; and

unless the Tribunal extends time for the application the Tribunal must not admit the application