



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

Case Reference : **LON/00AM/LBC/2015/0010**

Property : **2 Millfields Court, 204 Millfields Road, Clapton, London E5 0AR**

Applicants : **Barron Properties (Mr M Kahan)**

Respondent : **Ms C Hunte**

Type of Application : **Application for a determination UNDER Section 168 (4) of THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 in respect of whether the Respondent has breached a covenant in the lease**

Tribunal : **Judge Daley**

Date and venue of paper determination : **20 March 2015 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **20 March 2015**

DECISION

Decisions of the Tribunal

- (1) The tribunal makes the determination as set out in paragraphs 17- 22 below.

The application

- a. On 23 January 2015, the Applicant made an Application for a determination that a breach of covenant or condition in lease had occurred pursuant to Section 168(4) of the Commonhold and Leasehold Valuation Act 2002.
- b. The premises which are the subject of this application are a two bedroom flat in a purpose built block of five flats.
- (2) Directions were given on 30 January 2015. The directions were settled on the papers without a case management conference.
- (3) The directions stated that -: *"...The tribunal will reach its decision on the basis of the evidence produced to it. The burden of proof rests with the applicant. The Tribunal will need to be satisfied: (a) that the lease includes the covenants relied on by the applicant; and (b) that, if proved, the alleged facts constitute a breach of that covenant."*
- (4) The Directions also provided that the applicant prepare a bundle of documents by 6 March 2015, and *"thereafter that the matter will be determined on the papers provided in the week commencing 16 March 2015."*

The Background

- (5) The Respondent holds a long lease of the flat, which require the landlord to provide services and the Respondent leaseholder to observe specific covenants under the terms of the lease. The specific provisions of the lease will be referred to below, where appropriate.

The Paper Determination

The alleged Breach

- (7) The Applicant in the written application form referred the Tribunal to clause 2.8 of the lease dated 20 December 1990, (subsequently assigned to the Respondent) which stated:-" 2. *The Lessee hereby covenants with the Lessors*

and as a separate covenant with the Lessees of the other flats comprised in the Development. (8). Not to assign underlet charge or part with possession of part only of the Flat.”

(8) In the Statement of Case, the Applicant stated that although the wording of the lease referred to under letting or parting with possession of part of the flat there was legal authority that this could be construed as a prohibition against under letting or parting with possession of the whole of the property.

The Witness Statement of Mordechai Kahan

(9) In his witness statement, Mr Kahan stated that he acquired the freehold interest in the Building on 5 August 1996 and that at the time the property was occupied by Mr and Mrs Murray. In or around November 1998 the Murray's requested his consent to assign the lease. He granted his consent in the form of a Licence to Assign.

(10) On 24 June 2005, the Respondent acquired the Lease and, on 21 July 2005, HM Land Registry registered her as the proprietor.

(11) Mr Kahan then stated that as a result of the Respondent not replying to various written correspondence, On 12 August 2014 he visited the Property for the purpose of establishing contact with the Respondent. At the property he met Sarah Symth who informed him that she was a tenant of the Respondent and that the property had been let to her. This was followed by a further visit on 27 October 2014 and a visit from the Applicant's agent on 19 November 2014. On each occasion the property was occupied by Ms Symth.

(12) On the last occasion Ms Symth provided the Applicant's agent with correspondence which had been sent to her at the property address to confirm her occupation. Copies of these letters were included in the bundle submitted to the Tribunal.

(13) In paragraph 17 and 18 of his witness statement Mr Kahan stated -: *“17. For the sake of completeness, at no time whatsoever did the Respondent request my consent to underlet or part with possession of the whole or part of the Property to Miss Symth or another. 18. Furthermore, at no time whatsoever did I consent to the Respondent underletting or parting with possession of the whole or part of the Property to Miss Symth or another...”*

The Respondent's reply

(14) The Applicant in their bundle of documents also included an "Admission Form" which stated-: *I Claudia Hunte of Flat 26, Evelyn Court, Amhurst Road, London, E8 2BD Admit that I have sublet ...the property known as Flat 2 Millfields Court, 2014 Millfields Road, Clapton...”*

(15) The Respondent, Claudia Hunte in a letter received on 11 March 2015, submitted that she had sublet the premises in circumstances where she had been unable to live at the flat due to financial pressure, and personal circumstances, and had sublet the flat to avoid it being repossessed. In her letter she stated. *“... I Claudia Hunte really didn't understand much about the lease. I was going through a bad time in my life and I didn't want my house repossessed [Sic]...”*

(16) The Tribunal was also provided with a copy of the decision of Field-v-Barkworth [1986] 1 All ER by the Applicant, in which it was held that-: *“... the*

words 'any part of the premises' in the covenant against assignment were clear and unambiguous and on its true construction the covenant prevented a tenant from assigning or underletting the whole of the premises or only part of the premises...

The Tribunal's decision and reasons for the decision

- (17) The Tribunal has carefully considered the documentary evidence and submissions of both parties; and has reached the following determination.
- (18) The Tribunal have determined that the Respondent is in breach of Clause 2(8), of the lease which states: *2. The Lessee hereby covenants with the Lessors and as a separate covenant with the Lessees of the other flats comprised in the Development.(8). Not to assign underlet charge or part with possession of part only of the Flat."*
- (19) The Tribunal are satisfied that the covenant in the lease, is capable of applying to the sub-leasing of the whole of the premises, and that the premises were at the material time being sub let to Ms Symth in breach of the lease.
- (20) The Tribunal are also satisfied that the Respondent's letter received on 11 March 2015 amounts to an admission of a breach of the lease.
- (21) Accordingly the Application for a determination that a breach of covenant or condition in the lease has occurred is determined in the Applicant's favour.
- (22) The Tribunal noted that the Directions dated 30/1/2105 stated **the respondent of the property should seek independent legal advice, as these proceedings may be a preliminary to court proceedings to forfeit the lease. That is they could lose their home.**
- (23) The Tribunal noted that the Respondent in her reply stated that she did not understand the lease, given the implications of the Tribunal's findings the Respondent may wish to consider the paragraph 22 of the decision above.

Name:

Ms M W Daley

Date: 20 March 2015

Appendix of relevant legislation

A summary of the legislation is set out below

The Law

Appendix

Section 168 (2) of Commonhold and Leasehold Reform Act 2002

(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 (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