



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

Case Reference : **LON/00BK/LBC/2015/0098**

Property : **Flat 60, Raynam, Norfolk Crescent,
London, W2 2PG**

Applicant : **Stargazer Investment Inc**

Representative :

Respondent : **ASI Overseas Investments Inc**

Representative :

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

Tribunal Members : **Francis Davey**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR
19 November 2015**

Date of Decision : **19 November 2015**

DECISION

1. The Respondent has, in breach of the covenant imposed by paragraph 4(b) of the Fifth Schedule to its lease of the Property from the Applicant, sublet the Property.

REASONS

2. In this application, the tribunal relies on the uncontradicted witness statement of Daniel Weil, director of Parkgate Aspen Limited, and of the additional documents supplied by the Applicant in the Applicant's bundle.
3. No correspondence has been received from the Respondent and the Applicant says that it has received no relevant communications from the Respondent.
4. This is an application, pursuant to s168(4) of the Commonhold and Leasehold Reform Act 2002, for determination that there has been a breach of covenant imposed on the Respondent by paragraph 4(b) of the Fifth Schedule to its lease of the Property from the Applicant.
5. The lease in question is dated 2 January 1990, with a term from 25 December 1986 to 24 December 2085 ("the Lease").
6. Clause 4 of the Lease states:

"The Lessee hereby covenants with the Lessors as set forth in the Fifth Schedule hereto."
7. Paragraph 4(b) of the Fifth Schedule states:

Not (but without prejudice to the other previous provisions in this Lease contained) assign underlet or part with possession or occupation of the whole of the demised premises without the written consent of the Lessor first obtained such consent not to be unreasonably withheld.
8. Mr Weil says that the Property was let by the Respondent to a Mr Rashad Al Jajery for a period of one month starting on 27 July 2015.
9. Mr Weil does not say how he came by this information, but he does say that it is the practice of the Applicant that its porters require every new occupier to fill in a form and a form giving that information is attached to the bundle.
10. Mr Weil also fails to explain how permission for sub-letting is normally sought nor, more significantly, does he say in terms that no permission was sought on this occasion.
11. However, Mr Weil does say that the Applicant has been concerned about the use of the flats in the building as short (holiday) lettings and that this is a practice that it considers undesirable.
12. Unsatisfactory though the evidence before the tribunal is, it does

appear that, on the balance of probabilities:

- A subletting has taken place.
- No permission was sought for that subletting (and therefore there can be no question as to whether permission was unreasonably withheld).

13. Accordingly the tribunal finds a breach of covenant.

Francis Davey
19 November 2015