



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

Case Reference : **CHI/23UE/LBC/2016/0024**

Property : **45 Queen Anne Court, Bristol Road,
Quedgeley, Glos. GL2 4JY**

Applicant : **Queen Anne Court (Quedgeley)
Limited**

Representative : **Kingsdale Group Limited**

Respondent : **Mrs Jean Althea Gilbert**

Representative : **-**

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

Tribunal Members : **Judge E Morrison**

Date of decision : **22 November 2016**

DECISION

The Application

1. By an application dated 13 September 2016 the Applicant lessor applied under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of covenant in the Respondent lessee's lease has occurred.

The Lease

2. The Tribunal has before it a copy of the lease for the Property dated 26 March 2010. By clause 4.8 the lessee covenants with the lessor and management company (the Applicant is now both entities) as follows:

“Not to occupy the Demised Premises or permit the Demised Premises to be occupied by any person other than a person as their principal residence and falling within one of the following categories:-

4.8.1 A person over 65 years of age; or

4.8.2 A person who is disabled and in receipt of Attendance Allowance or Disability Living Allowance (Care Component) at the middle or higher rate or any replacement or successor allowance thereto; or

4.8.3 A person who in the written opinion of his/her GP is disabled or suffers from a long term limiting illness such that he/she would benefit from the facilities and support available within the Development; and

4.8.4 The husband, wife or partner living with a person who falls within paragraphs 4.8.1, 4.8.2 or 4.8.3 above.”

Procedural matters

3. Directions were made on 3 October 2016 which included provision that the application was to be determined on the papers without a hearing unless a party objected within 28 days. No objection has been received.
4. Notice of the application was given to the Respondent's mortgagee (the original lessor) by letter dated 20 October 2016. The mortgagee has made no request to be joined as a party.
5. By letter from the Respondent to the Applicant's representatives dated 8 October 2016 the Respondent admitted “to a breach of the lease under clause 4.8 due to the fact that my daughter and son-in-law are living with me”.
6. Notwithstanding receipt of this letter admitting the precise breach in respect of which the Applicant sought a determination, the Applicant

has not sought to withdraw its application. It has lodged a determination bundle in accordance with the Directions.

7. In accordance with the overriding objective and in particular the requirement to avoid delay so far is compatible with proper consideration of the issues, the Tribunal makes this determination prior to the date indicated in the Directions, and dispenses with the need for a physical inspection.

Discussion and Determination

8. The Applicant's case is that since early 2015 the Respondent's daughter and son-in-law, neither of whom meet the requirements of clause 4.8 of the lease, have been living at the Property with the Respondent, including periods when the Respondent has been in hospital. The Respondent requires 24 hour care.
9. The Respondent has admitted the breach. In her letter of 8 October 2016 she explained that as she wishes to continue to live with her daughter and son-in-law (who are providing her with some care, although not 24 hour care) the Property was on the market. She requested that her family be allowed to remain until 27 November 2016. Earlier correspondence between the Applicant's managing agents and the Respondent's daughter indicates that the managing agents were aware of the property being marketed in early August 2016, over a month before making the application. A sale fell though on 6 October 2016.
10. The Tribunal determines that there has been a breach of clause 4.8 of the lease as admitted by the Respondent. The Applicant will be aware that any notice served under section 146 of the Law of Property Act 1925 must provide the lessee with a reasonable time to remedy the breach.

Dated: 22 November 2016

Judge E Morrison

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. 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.

3. 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 allow the application for permission to appeal to proceed.

4. 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 the party making the application is seeking.