



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

Case reference : **LON/00BG/LBC/2016/0002**

Property : **5 Rutherford House, Brady Street,
London E1 5PS**

Applicant : **The Mayor and Burgesses of the
London Borough of Tower Hamlets**

Representative : **Tower Hamlets Homes**

Respondent : **Mr Noman Arshad**

Representative : **Kashif Sethi (attorney)**

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

Tribunal member(s) : **Tribunal Judge Dutton
Mr M Cairns MCIEH**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of directions : **30th March 2016**

DECISION

DECISION

The Tribunal determines that there have been breaches of the covenants and conditions of the Respondent's lease pursuant to s168(4) of the Commonhold and Leasehold reform Act 2002.

BACKGROUND

1. The applicant landlord seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the respondent tenant is in breach of covenants contained in the lease. In particular, the applicant asserts that the respondent has breached Clause 3 (7) and (8) in that a Deed of Covenant was not delivered to the Council and further that Notice of Transfer/Assignment had not been given. The application is dated 19th January 2016.
2. A bundle of papers was lodged with us, which included a copy of the application and the Council's statement of case, the directions issued by the Tribunal, a copy of the flat lease and copies of the register of title for both the leasehold and freehold interest. In addition we were supplied with a witness statement of Isi Inyang a solicitor with Tower Hamlet Homes, exhibits accompanying the statement, legal submissions and a copy of the case report of *Glass and Glass LRX/153/2007*.
3. For the Respondent we had received an email from Mr Kashif Sethi which included a power of attorney for the Respondent, Mr Noman Arshad, who is not resident in the UK. Mr Sethi told us that it was accepted that Mr Arshad had breached the terms of his lease in not providing a copy of the Deed of Covenant or giving notice of transfer/assignment within the time required. It is also suggested that there were arrears of service charges but this is not a complaint that the Council makes in so far this application is concerned. The email from Mr Sethi exhibited a copy of the Deed of Covenant dated 10th March 2016 and the notice of assignment also dated 10th March 2016.

The Law

4. The law relating to this matter is set out at the end of this decision

Findings

5. By the email from Mr Sethi dated 23rd March 2016 Mr Arshad appears to accept that he has committed a breach of the terms of his lease, which he has now, it is said, remedied. Indeed by a letter dated 16th March 2016 the Council, through Tower Hamlets Homes confirms that the Deed of Covenant and Notice of Assignment have been received but that *"Notwithstanding the above the Council is still desirous of pursuing a determination from the Tribunal on principle"*.

6. The legal submissions, unsigned and undated states that the Lessee has breached the terms of his lease by failing to give Notice of Assignment. The submission goes on to set out the terms of the lease, although clause 3(7) contains a typographical error in the fourth line when it should read "*and delivered to the Lessors*" not "*or delivered*". It is noted that clause 3(7) contains no time requirement unlike 3(8) which requires the Notice to be given within 4 weeks of any transfer/assignment. It does however say as follows "*3(7) Not any time to assign sublet for a period exceeding twelve months or part with possession of the whole or part of the Demised Premises or permit or suffer the same to be done unless there shall previously have been executed at the expense of the Lessee and delivered to the Lessors for retention by them a Deed...*"
7. There appears to be no doubt that the Notice under clause 3(8) of the lease was not provided until 10th March 2016 at the earliest. The Respondent had acquired his interest in the flat on 8th October 2012. As to the Deed of Covenant, this also is dated 10th March 2016. As we indicated above unlike clause 3(8) no specific time scale is included. However, we consider that the phrase *unless there shall previously have been executed at the expense of the Lessee and delivered to the Lessors for retention by them a Deed* shows an intention that the Deed of Covenant should have been entered into at or before the date of the assignment. Certainly not on 10th March 2016.
8. We have borne in mind the decision of the Lands Tribunal in the case of Glass, said to be on all fours with the facts of this case. We accept the decision has authority. We find that Mr Arshad has breached the terms of his lease in that the Deed of Covenant was not entered into for some 3 ½ years after the purchase took place and that the Notice under clause 3(8) was not given within four weeks. Both issues were "remedied" after the application was issued.
9. The Council indicates that it is pursuing this matter on principle, notwithstanding that the Respondent has now rectified the breach and did so some 20 days before this matter came before us for determination. It is not within our jurisdiction to grant relief from the possibility of forfeiture. We have only to determine whether a breach has occurred.

Name: Tribunal Judge
Andrew Dutton

Date: 30th March 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

168 No forfeiture notice before determination of breach

(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 (c. 20) (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.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(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 a 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.

