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

Case Reference : **MAN/00BN/LBC/2017/0008**

Property : **73 Ribston Street, Hulme, Manchester M15 5RJ**

Applicant : **The Riverside Group Ltd**
Represented by : **N/A**

Respondent : **Mr Chong Jie Zhen**
Represented by : **N/A**

Type of Application : **Commonhold & Leasehold Reform Act 2002
– section 168(4)**

Tribunal Member : **Judge Jonathan Holbrook**

**Date and venue
of Hearing** : **Determined without a hearing**

Date of Directions : **3 August 2017**

DIRECTIONS

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DECISION

Breaches of covenant in the lease of the Property (dated 28 August 1998) have occurred by reason of the Respondent having:

- underlet (or shared possession of) the Property without the Applicant's prior approval; and
- permitted the Property to be used otherwise than as a private residence in single occupation.

REASONS

Background

1. On 19 May 2017, an application was made to the First-tier Tribunal (Property Chamber) under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition has occurred in a lease of a property known as 73 Ribston Street, Hulme, Manchester M15 5RJ ("the Property").
2. The lease in question ("the Lease") is an underlease dated 28 August 1998 and was made between Bellway Homes Ltd (1), Riverside Housing Association Ltd (2) and Yikman Siu (3). It was granted for the remainder of the term granted by a headlease dated 7 July 1998 and reserved an annual rent of fifty pounds.
3. The application was made by The Riverside Group Limited, which is the current landlord under the Lease. The application was made on the basis of an alleged breach of covenants not to underlet, or to share possession of, the Property without landlord's consent, and to use it only as a private residence in single occupation.
4. The Respondent to the application is Mr Chong Jie Zhen, who is the registered proprietor of the long leasehold interest in the Property and the current tenant under the Lease.
5. On 24 May 2017, the Tribunal gave directions for the conduct of the proceedings. The parties were informed that this matter was considered suitable for a determination without an oral hearing unless either party gave notice that they wished a hearing to be listed. As no such notification was received, the Tribunal proceeded to determine the matter on the basis of the evidence provided in the application and in written submissions provided by the parties in response to directions.
6. The Tribunal did not inspect the Property.

Law

7. A prerequisite for the forfeiture of a lease (otherwise than for a breach of a covenant to pay rent) is the service of a notice under section 146(1) of the Law of Property Act 1925. However, section 168(1) of the Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease of a dwelling may not serve such a notice unless section 168(2) of the 2002 Act is satisfied.
8. One of the ways in which section 168(2) may be satisfied is for it to be finally determined by the Tribunal (upon an application by the landlord under section 168(4)) that a breach of a covenant or condition in the lease has occurred.

The relevant covenants in the Lease

9. Clause 3(17)(b) of the Lease contains the following tenant's covenant:

“Not to assign or to underlet or part with or share the possession of the Premises except with the prior written approval of the Landlord such approval not to be unreasonably withheld or delayed ...”.
10. Clause 3(37) contains the following tenant's covenant:

“Not to use the Premises or any part thereof for any purpose other than as a private residence in single occupation”.

Evidence and submissions

11. The Applicant asserts that the Property has been sub-let on a succession of short-term 'holiday lets' and that this has been done without any request being made for the landlord's approval. The Applicant says that these lettings have been arranged via the 'Airbnb' website. Screenshots from that website were provided, which appear to show photographs of the Property and reviews by visitors who had stayed there. Copies of letters to the Respondent in which the Applicant alleged that breaches of the Lease had occurred were also provided.
12. In response, the Respondent sent two letters to the Tribunal in which he appears to admit that breaches of the Lease have occurred. Mr Zhen explained that, having purchased the Property in 2016, he had let it to a Ms L Chan who then used it for Airbnb lettings. Mr Zhen says that he had been unaware that this was prohibited by the terms of the Lease, but that the Property has now been removed from the Airbnb website and that short-term nightly lettings have ceased. Mr Zhen is now hoping to underlet the Property on a longer-term basis. Mr Zhen should note that he should seek the Applicant's approval before concluding any such underletting.

Conclusion

13. It is clear that the Property has previously been underlet by the Respondent and that this has been done without the landlord's approval, in breach of clause 3(17)(b) of the Lease. In addition, following the decision of the Upper Tribunal (Lands Chamber) in the case of *Iveta Nemcova v Fairfield Rents Limited* [2016] UKUT 303 (LC), it is clear that granting successive short-term lettings of a property is capable of amounting to a breach of covenant to use it only as a private residence. I find that such a breach has also occurred on the present facts. The Applicant is therefore entitled to a determination to that effect.