



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

Case reference : **LON/00AN/HPL/2015/0001**

Property : **Basement Flat, 38 Charleville Road,
London W14 9JH**

Applicant : **UKI 14 S.a R.L. (a company
incorporated in Luxembourg)**

Representative : **Ms Harriet Holmes of Counsel**

Respondent : **Ms E Khan**

Representative : **N/A**

Type of application : **Application for an Order
determining the Respondent's
tenancy under s.34 of the Housing
Act 2004**

Tribunal members : **Judge Carr
Mr Geddes RIBA**

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

Date of decision : **24th February 2016**

DECISION

Decisions of the Tribunal

- (1) The Tribunal determines to terminate the tenancy of the Respondent and requires the Respondent to deliver up vacant possession within 14 days of the date of this order.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal determines that the Respondent pay the Applicant's costs in this matter limited to £500.

The application

1. The Applicant seeks a decision pursuant to s.34 of the Housing Act 2004 ("the 2004 Act") that the Respondent's tenancy be determined.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Ms Harriet Holmes of Counsel at the hearing. The Respondent did not attend, nor was she represented.

The background

4. The property which is the subject of this application is a two bedroomed flat on the lower ground/basement floor of a five storey terraced property which is divided into five flats.
5. The Respondent has an assured shorthold tenancy of the property dated 16th July 2008. The assured shorthold tenancy was for a fixed term of 6 months from 1st August 2008. It has subsequently continued on a periodic basis.
6. The Applicant became the freehold proprietor of the five storey house on 6th January 2015.
7. On 9th October 2015 the Applicant's agents, FG Property Management served on the Respondent notice pursuant to section 21 of the Housing Act 1988. The date of expiry of the notice was 9th December 2015.

8. On about 28th October 2015 the London Borough of Hammersmith and Fulham made a Prohibition Order pursuant to section 20 of the Housing Act 2004 (the Order). The Order applied to the entirety of the property.
9. The Order became operative 28 days after 28th October 2015 on 25th November 2015.
10. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

The issues

11. Section 34 of the Housing Act 2004 requires the Tribunal to have regard to the following when determining whether or not to exercise its discretion to determine or vary a lease
 - (i) Whether the prohibition order has become operative
 - (ii) Whether the whole or part of the premises specified in the prohibition order forms the whole or part of the subject matter of a lease
 - (iii) Whether there is any sub-lessee who should be given an opportunity of being heard
 - (iv) Whether, if an order is made, it should be subject to any terms and/or conditions
 - (v) The respective rights, obligations and liabilities of the parties under the lease
 - (vi) All other circumstances of the case
12. Having heard evidence and submissions from the Applicant (no representations having been received from the Respondent) and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Should the Tribunal make an order determining the tenancy?

13. The Tribunal determines that the prohibition order is operative and that it applies to the entirety of the property. It further determines that there is no sub-lessee who requires an opportunity to be heard.
14. The Tribunal considers that the relevant circumstances of the case are as follows:
 - (i) The Applicant is at risk of being prosecuted for an offence pursuant to section 32 of the 2004 Act if it uses the premises in contravention of the Prohibition Order or permits the property to be so used
 - (ii) The Applicant is under an obligation to carry out certain remedial works as set out in Schedule 3 of the Order
 - (iii) The works required are extensive and invasive and it is neither appropriate or possible for the Respondent to continue residing at the premises whilst such works are carried out.
 - (iv) The Applicant informs the Tribunal that the London Borough of Hammersmith and Fulham agree with the Applicant's view in this instance.
 - (v) The Respondent has been asked more than once to vacate the property but has not done so.

The Tribunal's decision

15. The Tribunal determines the Respondent's tenancy be determined.

Reasons for the Tribunal's decision

16. The circumstances of the case are such that the order is the appropriate course of action to enable the required works to be undertaken.

When should vacant possession be required?

17. The Applicant requests that the Respondent be required to deliver up vacant possession of the Premises within 14 days of the Tribunal's order.

The Tribunal's decision

18. The Tribunal determines that the Respondent be required to give vacant possession of the property within 14 days of the date of this decision.

Reasons for the Tribunal's decision

19. The Respondent has been fully aware of the Applicant's requirement to take possession of the property for some time. The condition of the property is such as to represent a serious risk to the health and safety of the Respondent. Therefore the Respondent should be required to vacate the property as soon as possible.

Should the order be unconditional or subject to terms and conditions?

20. The Applicant considers that it is not appropriate for the Tribunal to make the order conditional or subject to terms and conditions. It argues that the Respondent has made no claim for compensation, that it believes the Respondent to be in receipt of Housing Benefit, and that the tenancy could have been determined without compensation by way of a County Court Order.

The Tribunal's decision

21. The tribunal does not attach any terms or conditions to the order.

Reasons for the Tribunal's decision

22. The Respondent has made no argument for the application of any terms or conditions to the order.

Application for costs

23. The Applicant asks the Tribunal for its costs in this matter.
24. The Applicant points to the clause in the AST agreement entitling the Landlord to its costs and expenses for any proceedings necessary to gain vacant possession of the property.

25. The Applicant was not able to produce a schedule of costs at this juncture but indicated that the brief fee for Counsel was £850 plus VAT and that other costs were payable in connection with the application.

The Tribunal's decision

26. The Tribunal determines not to make an order for costs as it has no power to do so under s. 34 of the Housing Act 2004.

Name: Judge Carr

Date: 24th February 2016

Appendix of relevant legislation

s.34 of the Housing Act 2004

34. Power of tribunal to determine or vary lease

(1) Subsection (2) applies where –

(a) a prohibition order has become operative, and

(b) the whole or part of any specified premises form the whole or part of the subject matter of a lease

(2) The lessor or the lessee may apply to (the appropriate tribunal) for an order determining or varying the lease.

(3) On such an application the tribunal may make an order determining or varying the lease, if it considers it appropriate to do so

(4) Before making such an order, the tribunal must give any sub-lessee an opportunity of being heard

(5) an order under this section may be unconditional or subject to such terms and conditions as the tribunal considers appropriate

(6) the conditions may, in particular, include conditions about the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise

(7) in deciding what is appropriate for the purposes of this section, the tribunal must have regard to the respective rights, obligations and liabilities of the parties under the lease and to all the other circumstances of the case

(8) in this section 'lessor' and 'lessee' include a person deriving title under a lessor or lessee.