



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

Case References : **BIR/00CN/LBC/2018/0005 (1)
BIR/00CN/LAC/2018/0006(2)**

Property : **98 Rupert Street, Nechells, Birmingham,
B7 5DS**

Applicant : **Sycamore Management (Nechells) No 1 Ltd**

**Applicant's
Representative** : **SLC Solicitors**

Respondent : **Mr Paul Thomas**

**Respondent's
Representative** : **Duncan Lewis Solicitors**

Applications : **(1) Application for determination of
allegation of breach of covenant
(2) Application for determination of
administration charges**

Date of Hearing : **28 March 2019**

Tribunal : **Judge P.J.Ellis
Mr Colin Gell**

Date of Decision : **11 April 2019**

DECISION

1. This matter first came to the Tribunal as an application for a determination that the Respondent is in breach of the terms of his lease agreement with the Applicant in respect of 98 Rupert Street Nechells Birmingham B7 5DS (the Property). The allegation made by the Applicant was that the Respondent had sublet the Property without serving the sub-tenant with particulars of tenant's obligations as required by the lease and secondly that the Respondent had not complied with the terms of the sub-tenancy by checking the electrical installations in the Property upon commencement of the sub-tenancy. Also there was a consequential application for determination of liability for administration charges payable by the Respondent.

2. The first hearing occurred on 9 January 2019. The Tribunal inspected the premises that morning and reconvened at the hearing centre for an oral hearing. However, prior to commencement of the hearing the parties agreed the terms of a consent order without the need for a hearing pursuant to Rule 35 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rule 2013 (the Rules).

3. The terms of the order were:
 - (i) *The Respondent do provide to the Applicant written confirmation within 14 days that:*
 - a. *Paragraph 5 on page 8 of the sub-tenancy dated 14 July 2018 has been complied with*
 - b. *Schedule 1 of the lease dated 31 March 1989 and made between the original parties has been provided to the sub-tenant*
 - (ii) *Upon receipt of the above the Applicant shall give written retrospective consent for the sub-tenancy dated 14 July 2018 within 14 days*
 - (iii) *The application for Administration fees be adjourned for 28 days when the parties shall write to the Tribunal notifying whether a settlement has been achieved. In the event that no settlement is achieved the matter be relisted for paper determination.*

4. On 27 February 2019 the Applicant served a witness statement prepared by Mr Mark Strangward on behalf of the Applicant seeking “*its full costs under an Administration Charge against the Respondent along with breaches to be remedied failing which it requires a determination that the breaches are still existing in order to issue a notice under s146 Law of Property Act 1925.*”
5. Mr Strangward asserted in his statement that the Respondent had failed to comply with the original order of 9 January 2019 by his alleged failure to comply with both provisions of the order.
6. In response Mr Thomas served a witness statement denying that he was in breach of the order and that he had complied with all his obligations.
7. Rule 35 of the Rules provides that “*the Tribunal may at the request of the parties but only if it considers it appropriate, make a consent order disposing of the proceedings and make such other appropriate provision as the parties have agreed*”.
8. On 9 January 2019 the Tribunal was satisfied the order presented by the parties was a sensible resolution of the matter leaving only the issue of administration charges for the Tribunal. The final sentence of the third paragraph of the order deals with the administration charge and directs that the matter will return to the Tribunal for paper determination only if the settlement cannot be achieved.
9. From the respective statements of case which the parties have now served, it is apparent to the Tribunal that there is a dispute of fact whether or not the Respondent has complied with the terms of the consent order. The Applicant’s case is an explicit allegation of non-compliance with the order. The settlement defined in the consent order required actions by the Respondent. Although it is common ground that he undertook some actions after the January hearing the issue now is whether or not his actions have discharged his obligations. The Applicant claims they do not and has brought this application for “a

determination that the breaches are still existing in order to issue a notice under s146 Law of Property Act”.

10. The issue of whether or not there was a breach of covenant was disposed of by the consent order of 9 January 2019. The Tribunal has no power to enforce its orders. On making the consent order the only issue for resolution was the liability for administration charges. That matter was adjourned but on making the consent order the Tribunal had made a final determination of the substantive issue and enforcement for alleged non-compliance is a matter for the county court.

Administration Charges

11. The Tribunal is asked to determine whether the Applicant is entitled to recover legal costs as administration charges and if so what sum is reasonable. In view of the Tribunal’s decision regarding its lack of jurisdiction to resolve the issue of compliance with the consent order the only costs for consideration are those relevant to the hearing of 9 January 2019.
12. The sum claimed is £2607.36 inclusive of vat. The claim comprises £1789.36 fees of SLC solicitors including the Tribunal issue fee and a further £515.00 and vat advocates fee. The lease includes a standard clause that the Respondent will be liable for legal fees incurred in connection with preparation and service of a s146 notice. The Applicant relies upon the prehearing correspondence referring to the possibility of forfeiture and *Freeholders of 69 Marina St Leonards on Sea v Oram* [2011] EWCA Civ 1258 together with other cases it is not necessary to specify.
13. The Respondent denies he is liable for any costs because he asserts the Applicant was unreasonable in both refusing his request for retrospective consent to sublet and then bringing these proceedings. He asserts he was not aware of the proceedings until his solicitor sent him a copy of the application. He states there was confusion over the address for correspondence and a failure on the part of his agent which caused the omission to obtain consent to

sub-let. Had he received the pre-action correspondence he would have acted upon it.

14. Having seen the correspondence the Tribunal understands why the Applicant made its original application to the Tribunal but it is not satisfied that forfeiture was the primary intention of the Applicant. The Tribunal does not consider this a case in which the Applicant is entitled to indemnity costs to the date of the January hearing. Moreover, as the matter is outside the jurisdiction of the Tribunal the costs associated with the matter of enforcement are also not allowed.
15. The Tribunal allows the issue fee of £200.00 and the sum of £515 for costs as an administration charge.

Appeal

16. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber) on a point of law. Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).

Tribunal Judge PJ Ellis

Chair