



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

**Case Reference** : **LON/00AU/LBC/2018/0025**

**Property** : **15 Michael Cliffe House, Skinner Street, London EC1R OWW**

**Applicant** : **LB of Islington**

**Representative** : **Patricia Walters (legal department)**

**Respondent** : **Ms Kelly Rossiter**

**Representative** : **None**

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

**Tribunal Judge** : **Mr L Rahman**

**Date and venue of Hearing** : **6<sup>th</sup> June 2018 at 10 Alfred Place, London WC1E 7LR (paper hearing)**

**Date of Decision** : **6<sup>th</sup> June 2018**

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**DECISION**

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## **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 covenant, namely, that the respondent was subletting the property but had failed to provide to the applicant, within one month, the original or copy of the tenancy agreement and / or other document giving rise to the subletting of the property and failing to pay the applicant its registration fee for the sublet despite several letters sent by the applicant requesting the same (contrary to clause 3(14) of the relevant lease).

## **The issue**

1. Whether there has been a breach of covenant.
2. The burden of proof rests with the applicant to prove, on the balance of probabilities, the lease includes the covenant relied upon and that the alleged facts constitute a breach of that covenant.

## **The tribunal's findings and reasons**

3. The tribunal has considered the copy of the relevant lease, the witness statement of Nina Dosanj, and copies of the letters sent to the respondent as set out in the bundle relied upon by the applicant and served upon the respondent further to the tribunals directions dated 9/4/18.
4. The tribunal notes the respondent was directed but had failed to submit a bundle by 8/5/18, including her full statement in response to the applicant's case setting out in full the grounds for opposing the application.
5. The tribunal notes the letter from the applicant dated 9/5/18 stating that the respondent had provided a copy of the relevant tenancy agreement and had paid the relevant registration fee on 24/4/18 and 3/5/18 respectively but that the tribunal should nevertheless determine whether there had been a breach in any event.
6. The tribunal notes the respondent telephoned the tribunal caseworker on 1/6/18 and stated that she wanted the application to be postponed, she admits the breach alleged by the applicant, she was advised that if she paid the legal costs "the case would go away", she had been trying to contact Ms Walters to pay the £1,600 legal fees which had inexplicably increased from £1,200 but was not receiving any response, she wanted to know the implications for a determination that she was in breach, and she was worried that the applicant may seek to forfeit the lease. The respondent was advised to seek legal advice if necessary.

7. The tribunal notes the response from the applicant in its email dated 4/6/18, namely, that it saw no need for the matter to be adjourned, the tribunal should determine whether there had been a breach, and that the respondent had been informed of the applicant's position.
8. The tribunal notes that it retains jurisdiction to determine whether a breach of covenant has occurred notwithstanding that a breach may have been remedied. The tribunal found no good reason to adjourn the matter on the basis put forward by the respondent or for any other reason.
9. In light of the evidence provided by the applicant, the failure by the respondent to provide any evidence challenging the allegation made by the applicant, and the admission made by the respondent, the tribunal is satisfied that there has been a breach of covenant as set out in the application.
10. I note the concerns raised by the respondent. It is up to the applicant whether it intends to make any application to forfeit the lease. Any such application would be determined by the Courts and the respondent may wish to seek legal advice if necessary. If the respondent disagrees with the legal costs sought by the applicant, whether as an administration charge or a service charge, the respondent may challenge this at this tribunal by making the relevant application. However, the respondent may wish to seek legal advice if necessary before making any such application.

**Name:** L Rahman

**Date:** 6/6/18