



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

Case reference : **LON/00AN/LBC/2019/0051**

Property : **14 Stuart House, 46 Windsor Way,
Brook Green, London W14 0UF.**

Applicant : **The Windsor Way Management
Company Limited**

Representative : **Gregsons, Solicitors.**

Respondent : **Khaled Mekky**

Representative : **In person**

Type of application : **Determination of an alleged breach
of covenant under S.168(4) of the
Commonhold and Leasehold
Reform Act 2002.**

Tribunal member(s) : **Ms. Aileen Hamilton-Farey
Ms. S. Coughlin**

**Date and venue of
hearing** : **16 September 2019 at 10 Alfred
Place, London WC1E 7LR**

Date of decision : **16 September 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the respondent leaseholder is in breach of the following clauses and covenants to the lease.
 - a. Clause 4(6) – The Lessee must Observe and perform the Regulations in the Fourth Schedule hereto PROVIDED that the Lessor reserves the right by notice to add to modify or waive such Regulations in its absolute discretion.
 - b. The Fourth Schedule – Regulations:
 - i. Not at any time to use or occupy or permit the Demised Premises to be used or occupied except as a private residence only.
 - ii. Not at any time to use or permit the use of either the Demised Premises or any part thereof for business purposes.
 - c. Clause 3(7)(a) – Not to assign transfer underlet mortgage charge or part with possession of any part or parts only of the Demised Premises as distinguished from the entirety thereof.
- (2) The tribunal makes no determination on the costs of this matter, and if the respondent wishes to dispute either the quantum or liability for costs then he must make an application to this tribunal on the appropriate form.

The application

1. Pursuant to an application dated 9 July 2019, the applicant seeks a determination that the respondent leaseholder is in breach of various covenants and regulations of the lease.
2. In particular, the applicant asserts that the respondent has, since July 2016 permitted his flat to be used other than as a private residence, in breach of Regulation (1) of the Fourth Schedule, and has used the flat for business purposes in breach of Regulation (2) of the Fourth Schedule. Finally, the applicant asserts that the respondent has parted with possession of part only of the flat in breach of Clause 3(7)(a) of the Lease.

3. The respondent occupies the property under a lease dated 2 June 1986 between Brookgreen Investments Limited (1), The Windsor Way Management Company Limited (2) and Ahmad Zekra (2) for a term of 125 years from 24 June 1985.
4. The applicant says that, the respondent lives at the property from time to time but when he is not in occupation he has been using it, or letting rooms within it on Airbnb for short-term holiday lets. The applicant asserts that this use is therefore partly for commercial gain and is a business use contrary to Clause 4(6) of the Lease and paragraph 2 of the Fourth Schedule.
5. In addition, the applicant says that the short-term lettings via the Airbnb website is both underletting and parting with possession of part only of the property in breach of Clause 3(7)(a) of the Lease.
6. The applicant says that the respondent has been written to, informing him of the breaches.

Directions:

7. The tribunal issued directions on 15 July 2019 identifying the need for the respondent to seek advice, and requesting that he prepare a bundle of documents to be used by the tribunal. The respondent has not produce a bundle.

Respondents Response:

8. In an e-mail of 1 August 2019, the respondent states *'I admit to having my property on Airbnb for the purpose of having one of the rooms let out, as a lot of flats in Windsor Way are let, including the flat neighbouring mine. I did this without knowing that I needed to seek permission from Windsor Way Management.'*

Determination:

9. The tribunal is satisfied that the lease contains the covenants relied on by the applicant.
10. The tribunal is satisfied from the respondent's admission that he has been using at least one room in the flat for short-term lettings contrary to Clauses 4(6) and 3(7)(a) of the Lease. The tribunal therefore finds on the evidence the respondent to be in breach of those covenants of the lease.
11. In his submission, the respondent refers to the costs claimed by the applicant in this matter, and has offered £500.00 to the applicant. The

parties' attention is drawn to the fact that, although the tribunal has determined that breaches of covenants have occurred, no determination on the costs claimed has been made, and the respondent, Mr. Makky still has the right to challenge those costs by making a further application to the tribunal.

Tribunal: Ms. A. Hamilton-Farey

Date: 16 September 2019.

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).