



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

Case Reference : CHI/18UB/LBC/2019/0050

Property : Flat 2, The Hartleys, 6-8 Hartley Road,
Exmouth EX8 2SG

Applicant : Danesdale Land Limited

Representative : Remus Management Limited

Respondent : Ms J Conal

Representative :

Type of Application : Breach of lease

Tribunal Member(s) : Judge R. Cohen

Date and venue of hearing: Paper determination

Date of Decision : 19 May 2020

DECISION

Decision of the Tribunal

- 1 The Tribunal is not satisfied that the Respondent committed the breaches of the covenant at paragraph 8 of the First Schedule to the lease. Accordingly, the Applicant's application to the Tribunal is dismissed.

The Application

- 2 The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that a breach of covenant contained in the Respondent's lease has occurred.
- 3 The application was made on 19 November 2019. The Tribunal issued directions on 29 November 2019. On 23 December 2019 (three days later than directed) the Applicant filed its statement of facts by Mr Daniel Morgan and supporting documents. A witness statement was made by the Respondent dated 25 February 2020. However, an application by the Respondent to vary directions to enable this witness statement to be introduced in evidence was dismissed. Accordingly, I have not taken it into account in reaching my decision.

The Evidence

- 4 By a lease dated 25 November 2003, flat 2 The Hartleys, 6-8 Hartley Road, Exmouth EX8 2SG was let for a term of 125 years from 24 June 1998 ("the Lease"). The Respondent is the lessee and the Applicant is the lessor under the Lease. The lessor's title consists of 17 flats, parking areas, gardens and grounds referred to as "the Mansion" and the building within the Mansion of which flat 2 forms part is referred to as "the Building". Flat 2 is on the ground floor of the Building.
- 5 By clause 2 of the Lease, the lessee covenanted with the lessor and with the other lessees of the other flats comprised in the Mansion that "the lessee and the persons deriving title under the lessee will at all times hereafter observe the restrictions in the First Schedule" to the Lease. Paragraph 8 of the First Schedule provides as follows

"not to obstruct the driveway, parkways, entrances, entrance halls, landings and staircases leading to the flats in the Mansion or to leave any article whatsoever therein or thereon."
- 6 The Applicant alleges that the Respondent has left various items on the managed land outside of the property. The items include a table, five chairs and a log burner. The Applicant says that the Respondent has been written to requesting that these items need to be removed as leaving them where they are to be found is a breach of the terms of the Lease.

7 In a statement of fact, verified by a statement of truth, the Applicant states that at the time of a visit to The Hartleys in 2018 there were various items on the managed land being a plastic table and four chairs. Photographic evidence was taken as proof.

8 On 5 April 2019 Mr Morgan of Remus Management Limited who are the Applicant's managing agents and representative in this application, wrote to the Respondent stating that they had received a complaint regarding the garden furniture which is on the managed land without permission and asking for it to be removed within 14 days. On 3 July 2019 Mr Morgan wrote to the Respondent. That letter stated "it is ... disappointing to note that the garden furniture has not been removed despite my request in my previous letter". On 5 November 2019 Mr Morgan wrote to the Respondent referring to his earlier letters regarding the items including a barbeque, a table and chairs outside of your property. Mr Morgan said it was disappointing to note that despite the requests for these items to be removed they were still on the managed land outside of the Respondent's property. The letter then referred to paragraph 8 of the First Schedule to the Lease and continued

"Please can you therefore arrange for all the items are (sic) removed by the 15th November 2019. Failure to adhere to this request will leave me with no option but to commence legal action against you for the breach of the lease."

9 The Applicant has produced black and white copies of 3 photographs which show a garden table and 5 chairs. The copies are embedded in emails sent from Mr Morgan's iPhone by gmail to Daniel Morgan each having the subject "2 the Hartleys". The emails are dated 5 July 2019 and 11 and 15 November 2019. However, there is no information as to when the photographs were taken or by whom they were taken, although it is likely that it was Mr Morgan as the emails were sent from his iPhone. No information or evidence has been provided explaining from where the photographs were taken or the location or area which is shown in them.

Consideration

10 The Tribunal directs itself that the purpose of bringing proceedings under section 168(4) of the Act is to enable a landlord under a long lease of a dwelling to serve a notice under section 146 of the Law of Property Act 1925 which is a necessary preliminary to forfeiture of a lease for a breach of covenant by the tenant other than non-payment of rent. In these proceedings the Tribunal is required to determine whether the tenant has committed an actionable breach of covenant. A finding against the tenant could result in the loss of a valuable asset which may be the tenant's home.

11 The Tribunal has considered the evidence of articles being left in or on driveway, parkways, entrances, entrance halls, landings and staircases leading to the flats. The evidence is lacking. Two of the letters written to the Respondent were written before the first email with a photograph. Two emails followed the date of the last letter. Accordingly, the Tribunal has concluded that it cannot make any

finding that it is more likely than not that photographs illustrated the position at any particular date.

- 12 There is a more fundamental problem. The Tribunal has studied the lease plans and the title plan to the respondent's registered title to the flat. The Tribunal has not been able on the basis of the information provided to conclude that, on the balance of probabilities, the photographs showed articles in or on one or more of the driveway, parkways, entrances, entrance halls, landings and staircases leading to the flats.
- 13 There is no evidence as to whether and to what extent the items mentioned caused any obstruction within the meaning of paragraph 8. Nor did the Applicant advance any case as to what would amount to "leaving an article" so as to amount to an actionable breach of the lease. Given the findings it has made, the Tribunal need not speculate about these matters.
- 14 **For those reasons the Tribunal is not satisfied that it is more likely than not that the Respondent committed the alleged breaches of the covenant at paragraph 8 of the First Schedule to the lease. Accordingly, the Applicant's application to the Tribunal is dismissed.**

Rights of APPEAL

1 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

