



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

Case reference : **LON/00AG/LBC/2019/0102**

HMCTS Code : **P:PAPERREMOTE**

Property : **Flat 4, Grafton Chambers,
Churchway. London NW1 1LN**

Applicant : **Starret Company Limited
("the lessor")**

Representative : **YVA Solicitors LLP**

Respondent : **Ms Chia-Jou Chou
("the tenant")**

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

Tribunal member : **Anthea Rawlence MRICS**

Date of decision : **November 2020**

DECISION

Covid-19 pandemic: description of hearing:

This has been a remote hearing on the papers which has been not objected to by the Applicant. The form of remote hearing was P:PAPERREMOTE. A face-to-face hearing was not held because it was not practicable, and all issues could be determined on paper.

Decisions

1. The Tribunal strikes out those parts of the application relating to the payment of service charges and rent pursuant to Rule 9(2)(a) as it has no jurisdiction.
2. There has been breach of the covenant not to use the flat for any purpose whatsoever other than as a private dwelling house in the occupation of one family only.

Application

3. The landlord applied on 10 December 2019, under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”), for a determination that there have been breaches of covenants contained in the lease of the flat.
4. The Respondent has allowed the flat to be used for Airbnb purposes, in breach of the restricted user clause 3(1)(g)(i), 3(1)(h) and clauses 1 of the Second Schedule of the lease.
5. The use of the flat for Airbnb purposes is and continues to cause a nuisance to the owners and occupiers of other flats in the building in breach of clause 1 of the Second Schedule.
6. In consequence of the breach the policy of the insurance is vulnerable to become void or voidable or cause an increase in the premium, in breach of clause 2 of the Second Schedule.
7. The Respondent has failed to pay the ground rent for the years 2016, 2017, 2018 and 2019 totalling £600 in breach of clause 3(1).
8. The Respondent has failed to pay the service charges and interim service charges amounting to £2,669.59 in breach of clause 4(2).
9. An oral case management conference was held on 28 January 2020 when the Applicant was represented by Counsel. There was no attendance by or on behalf of the respondent who has not responded to the application.
10. The Applicant had served notice of the application to the Respondent at the address given to the Land Registry. The Applicant had not been notified of any change of address and thus all correspondence has been sent to Flat 4, Grafton Chambers that is The Property. The Tribunal notes that the street address on the lease is Churchway and the address given by the Applicant is Grafton Court. The Tribunal is satisfied that the property is located on the corner of Churchway and Grafton Place.

11. Since there has been no response from the Respondent to correspondence or a request for an oral hearing, the Tribunal stated that it would issue a decision based on the evidence before it.

Preliminary Issue

12. Directions were issued on 28 January 2020 when inter alia the Tribunal asked for submissions with regard to the non-payment of service charges and rent (see paragraphs 7 and 8 above).
13. The Applicant submitted that the failure to pay the interim charge (of the service charge as defined in clause 1(3) of the Seventh Schedule) was a breach of the Respondent's covenant under clause 4(2) and Clause 1(3) of the Seventh Schedule.
14. Furthermore, by witness statement dated 17 February 2020 Mr Demosthenes Demosthenous acting for the managing agents of The Property wrote that he relied on Section 81 of the Housing Act 1996:

(1) A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure by a tenant to pay a service charge or administration charge unless
(a) it is finally determined by (or on appeal from the appropriate tribunal) or by a court, or by an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, that the amount of the service charge or administration charge is payable by him, or
(b) the tenant has admitted that it is so payable.
15. As the Respondent has not queried the service charge by way of S27A of the Landlord & Tenant Act 1985 the Applicant states there is an implied acceptance of the service charges. Furthermore, the interim charge has no right of determination under that Act.
16. The Tribunal notes that the interim charge is part of the service charge as defined in Section 18(1) and (2) of the Landlord and Tenant Act 1985 and as such can be the subject of an application under s27a of the Landlord & Tenant Act 1985.
17. However, The Tribunal has not been asked, or in any case is not in a position, to make any determination on section 81 the Housing Act 1996. The Application was for a determination under Section 168(4). By virtue of Section 169(7) of The Act the procedure under Section 168(4) is inappropriate. The Tribunal therefore strikes out those parts of the application relating to the payment of service charges and rent pursuant to Rule 9(2)(a) as it has no jurisdiction.

Statutory framework

18. Section 168 of the Commonhold and Leasehold Reform Act 2002 states: -

- a. *A landlord under a long lease of a dwelling may not serve a notice under s.146 (1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless sub-section (2) is satisfied.*
- b. *This sub-section is satisfied if –*
 - (a) *it has been finally determined on an application under sub-section (4) that the breach has occurred,*
 - (b) *the tenant has admitted the breach, or*
 - (c) *a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.*
- c. *But a notice may not be served by virtue of sub-section (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.*
- d. *A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*
- e. *But a landlord may not make an application under sub-section (4) in respect of a matter which -*
 - (a) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
 - (b) *has been the subject of determination by a court, or*
 - (c) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

Background

19. Grafton Chambers is a building converted to residential use in 1995. It is situated on the corner of Churchway and Grafton Place, close to Euston Station.

20. Ms Chia-Jou Chou purchased the leasehold interest in the flat in November 2015. The lease is for a term of 125 years lease from 29 September 1995.

21. Following comments from other tenants of Grafton Chambers in July 2019, Mr Demosthenes Demosthenous acting for the managing agents of Grafton Chambers investigated the renting of the flat through Airbnb.
22. In his witness statement dated 17 February 2020 he stated that he himself made a booking with Airbnb for the night of 12 February. He provided a description of the property with three letting rooms numbered 1,2 and 3. Photographs were also provided of him picking up the key from a keybox at the adjoining property, letting himself into Grafton Chambers and into Flat 4 on the third floor and then photos of Bedroom 3 which correspond with photographs shown on the Airbnb website. There was also a photograph of the shared bathroom.

The Lease

23. The Lease is dated 5 March 1996 between Kewtape Limited and Oldfield Properties Limited and is for the 3rd floor flat at Grafton Chambers, Churchway, London NW1. It is 125 years lease from 29 September 1995 ground rent payable (first 50 years £150, next 50 years £300 and remainder of the term £600) and 14.9% service charge.
24. Clause 2 of the Lease states that the Tenant covenants at all times to comply with the restrictions set forth in the Second Schedule.
25. Clause 1 of the Second Schedule states:

'Not to use each of the flat hereby demised not to permit the same to be used for any purpose whatsoever other than as a private dwelling house in the occupation of one family only or for any purpose from which a nuisance can arise to the owners, lessees or occupiers of the other flats in the Building or in the neighbourhood nor for any illegal or immoral purpose.'

26. Under Clause 3(1)(g)(i) and 3(1)(h) the Tenant covenants not to assign charge underlet or part with possession of part only of the flat and not to divide the possession of the flat by an assignment or underletting or parting with possession of part only without the prior written consent of the Applicant.

Reasons for our decision

27. The Tribunal is satisfied that the property was let through Airbnb on 12 February 2020 in breach of the Lease.

28. The Tribunal is also satisfied that there have been previous occasions when the property was let as evidenced by the description and photo of Room 3 on the Airbnb website.

29. Consequently, the Tribunal conclude and find that the breach of covenant asserted by the Applicant has occurred.

Name: Anthea J Rawlence

Date: November 2020

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).

Lands@justice.gov.uk

Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).