

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No. CHI/45UC/LBC/2005/0005

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 168(4) OF THE COMMONHOLD AND LEASHOLD
REFORM ACT 2002**

Property: Flats B & C, 16 Norfolk Road,
Littlehampton, West Sussex BN16 2LG

Applicant: Mr Brian Nixon

Respondents: Mrs C Bevington (1)
Mr D Yardley (2)

Date of Application: 4 September 2007

Directions: 17 September 2007

Hearing: 5 December 2007

Appearances: Mr B Nixon in person
Ms C Bevington in person

Decision: 12 December 2007

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA Cantab
Mr T W Sennett MA FCIEH

Ref: CHI/45UC/LBC/2007/0022

Property: Flats B & C, 16 Norfolk Road, Littlehampton, West Sussex BN17 5PN

Application

1. This was an application made on 4 September 2007 by Mr Brian Nixon, of Flat A, 16 Norfolk Road, Littlehampton, for a determination whether there has been a breach of covenant by Ms Catherine Bevington and Mr David Yardley, the respective lessees of Flats B and C, 16 Norfolk Road, Littlehampton.
2. Directions were given by the Tribunal on 17 September 2007. Mr Nixon provided a Statement of case together with a copy of his lease of Flat A. Ms Bevington sent a letter to the Tribunal dated 13 November 2007. Mr Yardley did not respond to the Application in any way. The matter was set down for a hearing on 5 December 2007.

Law

3. Section 168 subsections (1) and (2) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") provide that a landlord may not serve a notice under Section 146 of the Law of Property Act 1925 in respect of a breach by a tenant of a covenant or condition in a lease unless it has been finally determined, on an application to the Leasehold Valuation Tribunal under Section 168(4), that a breach has occurred.
4. Section 168(4) provides that a landlord under a long lease of a dwelling may make such an application. Section 169(5) provides that the term "landlord" has the same meaning as in Chapter 1 of the 2002 Act. This definition is to be found in S.112(5) which reads: *"Where two or more persons jointly constitute either the landlord ... in relation to a lease of a flat, any reference to the landlord is ... a reference to both or all of the persons who jointly constitute the landlord ... as the case may require"*.

Lease

5. The Tribunal was provided with a copy of the lease of Flat A, of which Mr Nixon is the lessee. Ms Bevington produced the original lease of Flat B at the hearing. Both leases are in the same form, dated 21 May 2001 for a term of 125 years from 1 January 2000, at an annual rent of a peppercorn.
6. The landlords are named at Paragraph 1.1 of the Particulars of both leases as: "Brian Nixon, Michele Patricia Hartwell, David Nigel Yardley and Nathaniel Peter Boarola of Flats 16a, 16b, 16c and 16d Norfolk Road Littlehampton West Sussex respectively".
7. Mr Nixon is named as the tenant in the lease of Flat 16A, and Michele Hartwell as the tenant in the lease of Flat 16B. Ms Bevington's Land Registry Certificate shows that the leasehold interest was registered on 1 July 2002 in her name jointly with her brother Mark Bevington and her sister Amanda Blakeney.
8. Insofar as is material to the application, Clause 7 of the lease contains the following covenants on behalf of the tenants:

"7.11 To use and occupy the Flat as a private dwelling in a single household or family occupation only and not for any other purpose

7.12 Not to assign underlet or part with possession of part of the Flat as distinct from the whole".

Inspection

9. The Tribunal members inspected the property on 5 December 2007 before the hearing. The property consists of a semi-detached Victorian town house converted into 4 flats

arranged over basement, ground floor and two upper floors, of brick and stucco rendered construction under a slated tiled roof. A side pathway gives access to sheds at the rear. The exterior is in fair decorative order.

10. The Tribunal inspected the interior of Flat 16A, occupied by Mr Nixon. This is a basement flat with two rooms, kitchen, bathroom/WC and access to the rear garden. They did not inspect the interior of Flats B and C, on the ground and first floors respectively, but did gain access to the common parts, which would benefit from some refurbishment.

Hearing

11. The hearing took place in Littlehampton on 5 December 2007. It was attended in person by Mr Nixon, accompanied by his son. Ms Bevington attended in person. Mr Yardley did not attend and was not represented.
12. The Tribunal first raised the question of the identity of the landlord, and whether Mr Nixon was entitled, by himself, to make an application under Section 168(4), as there were four individuals named as joint landlords in the leases. It drew the parties' attention to S.112(5) of the 2002 Act and its effect, namely that any application under S.168(4) must be made by all joint landlords.
13. Unfortunately, no Land Registry Office Copy Entry of the freehold title was provided, even though Mr Nixon had been invited to do so by the Tribunal office. Mr Nixon and Ms Bevington each confirmed their understanding, that the freehold was jointly owned by the lessees of all four flats, each holding a 25% share. However, Mr Nixon also asserted that he was the sole landlord, as he had the land at the front and rear of the building, but was unable to produce any evidence to support this. On questioning from the Tribunal, he said that he believed that, as the owner of the basement flat, he was the freehold owner at common law of the land upon which the house was built. He also stated that Ms Bevington and the other flat owners only had a freehold interest in the building and not the land.
14. It was common ground between the parties that there was a Residents Association at the property. Neither Mr Nixon nor Ms Bevington thought this was a limited company, or that the freehold was owned by a tenants' management company. There was a secretary, chairman and treasurer who dealt with maintenance and repair at the property but Mr Nixon believed that the Association did not meet frequently enough.
15. Mr Nixon's case, in summary, was that Ms Bevington and Mr Yardley were both in breach of Clause 7.11 and 7.12 of the lease because they had unlawfully sub-let their flats. The Tribunal put to Mr Nixon that there was no prohibition on subletting the whole of the flat, but only part of it. Mr Nixon's interpretation of Clause 7.12 was that the words "as distinct from the whole" referred not to the flat, but to the whole house. Alternatively, he suggested that the flats could only be occupied by other people with the approval or consent of the landlords, but could not point to any term in the lease in support of this view.
16. Mr Nixon further submitted that Clause 7.11 meant all the lessees should occupy the flats as their own homes. He said that at the time the leases were granted, he had intended the contract to provide that the lessees should live in their flats, and that this would attract other elderly people who, like himself, would wish to live in the same property to their mutual benefit. He believed that the leases did indeed reflect this. He was concerned that Flat B was occupied by more than one person and that there was some nuisance behaviour in the form of loud music, frequent visitors, parties and drug use. He said that Flat C was occupied by a Polish family with children. His main complaint about any nuisance emanating from Flat C was that the drains had become blocked because of too much waste water.
17. Ms Bevington said that she and her siblings had jointly bought Flat B as an investment property, and had never intended to live there, but to let it. Legal advice at the time of the

purchase was that this was permitted under the terms of the lease. The flat had been sublet by them since 2002, and indeed by Mrs Hartwell before that. Their current sole tenant was a Michael Phillips who had lived there for two years on an assured shorthold tenancy. As far as she was aware, Mr Phillips occupied Flat B as his home and had not sublet the flat further. She assured Mr Nixon and the Tribunal that she and her siblings would investigate any complaints and if necessary serve two months notice on their tenant, as it was in their interests to protect their investment and the property.

Decision

18. The Tribunal first considered whether Mr Nixon had the requisite standing to make the application under S.168(4) of the 2002 Act. On the evidence before it, in particular the named landlords in the leases provided, the Tribunal was satisfied that the freehold interest was held jointly by the current lessees of the flats. It was noted that by the lease of Flat A, the shallow front garden and small area of rear garden are demised to this flat for the term.
19. By virtue of S.112(5), the application could only be made by all joint landlords acting together, and therefore the Tribunal concluded that Mr Nixon was not entitled to make the application acting alone. This meant that the Tribunal did not have jurisdiction to proceed to determine whether there had been a breach of covenant under Section 168(4).
20. The Tribunal makes no findings on the alleged nuisance behaviour of Ms Bevington's tenant or his visitors, or on the sub-letting of Flat C, other than to observe that any investigation by Ms Bevington and her siblings, along with improved communication between all relevant parties, could only be helpful in attempting to allay Mr Nixon's concerns.
21. In order to assist the parties, the Tribunal expresses the view that Mr Nixon has misunderstood the meaning of Clauses 7.11 and 7.12. Clause 7.11 does not require the lessees to occupy the flats themselves. Clause 7.12 is a standard lease term which provides that a lessee can sublet the whole of the flat, but cannot sublet part of it. There is no prohibition against subletting the whole flat and no requirement that prior consent or approval must be given by the landlords.

Dated 12 December 2007



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Ms J A Talbot MA
Chairman of the Tribunal