

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

In the matter of Section 168(4) of the Commonhold & Leasehold Reform Act 2002
("the Act")

and

In the matter of Second Floor Flat 35 Lorna Road Hove ("the property")

Between:

35 Lorna Road (Hove) Limited

Applicant

and

George Shahata

Respondent

Decision with Reasons

This matter was determined without an oral hearing on 18th April 2008

Date of Issue: 28th April 2008

Tribunal: Mr R P Long LLB

Application

1. The Applicant seeks a determination from the Tribunal that the Respondent has committed breaches of the Lease dated 6th September 2005 under which he holds the property made between the Applicant of the one part and the Respondent of the other part (“the Lease”).
2. The breaches of the Lease that the Applicant alleges the Respondent has committed are:
 - a. that he has underlet the property in breach of the provisions of clause 2.6.6 of the Lease without requiring the underlessee and others in occupation of the property to enter into a deed or deeds of covenant as required by clause 2.6.6 thereof.
 - b. that he has committed a breach of the terms of clause 3.6.1 of the Lease by allowing a nuisance to occur at the property and has allowed three persons to occupy the property, which is a one bedroom flat.
3. Clause 2.6.6 of the Lease contains a covenant by the lessee with the lessor:

“Not to assign demise underlet or otherwise part with possession of the whole of the Flat for all or any part of the term hereby created otherwise than by a deed containing a covenant by the intended assignee or underlessee directly with the Lessor to perform and observe during the term assigned or granted to the assignee or underlessee the covenants (including this present covenant) by the Lessee and conditions contained in this lease (and in the case of an assignment to pay the rents hereby reserved) in the same manner as if all the conditions and provisions were repeated in extenso in such deed with the substitution of the name of the intended assignee or underlessee for the name of the Lessee and with such other alterations as the dates and the parties or other circumstances shall render necessary”.

4. Clause 3.6.1 of the Lease contains a covenant by the lessee with the lessor and with the other owners and lessees of flats in the block that the lessee will at all times thereafter:

“ Not do or permit or suffer to be done in or upon the Flat or the Common Parts or in the Block or in the immediate vicinity of the Block anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Lessor or the owners or occupiers of any other part or parts of the Block or which may be injurious or detrimental to the reputation of the Block as a block of respectable residential flats and to ensure that all occupiers and visitors to the Flat comply with this requirement as though they were a lessee”

The law

5. The law relating to the matter is contained in section 168(4) of the Commonhold & Leasehold Reform Act 2002, which provides that a Landlord under a long lease of a dwelling may apply to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred.
6. It follows that the function of the leasehold valuation tribunal when such an application is made is purely that of determining the factual position, and no more.
7. The Tribunal has given due notice of its intention to determine this matter without a hearing, as it may do pursuant to regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 (SI 2003/2099) ("the regulations"). Regulation 13(5) permits the functions of the tribunal to be exercised by a single member of the Panel who was appointed to it by the Lord Chancellor. I was so appointed.

Evidence

8. I have considered this matter on the basis of the documentary information provided by the parties and without an oral hearing. It has not appeared to me to be necessary to conduct an inspection of the property in order to reach a decision in respect of the matters that are alleged.
9. The evidence concerning the alleged breach is contained in the extensive papers submitted by the Applicant's solicitors. Reduced to its essentials, as to the first allegation it is that the Respondent had let the property to successive tenants (the last of them was Mr Akunor) without having obtained the deeds of covenant required by the lease that are mentioned in paragraph 2(a) above. I have been shown a copy of Mr Akunor's tenancy agreement and it clearly does not contain such a provision.
10. As to the second alleged breach, that the tenants created a nuisance by making a noise at the property and that three persons occupied the property although it is a one bedroom flat the evidence is contained in the form of application that has been supplied to me. It is signed by Emily Fitzpatrick and contains a statement of truth. A list of five occurrences of noise at the property that might be regarded as excessive is set out in it. That statement contains further evidence of persons coming and going to and from the Respondent's flat from time to time. None of the events referred to in the application is said to have occurred after 3rd December 2007.

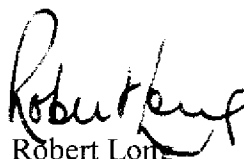
Determination

11. As to the first allegation that the Respondent has underlet the property in breach of the provisions of clause 2.6.6, it is clear from the terms of a letter from Messrs Englehart dated 4th March 2008 written on behalf of the Respondent and from the Respondent's letter to the Tribunal dated 9th April

2008 that they accept that there has been under letting. The first under tenants appear to have been persons named Carlos and Jose, and the second tenant was Mr Steve Akunor. The Respondent says that the property has not been underlet since 2nd February 2008, and that he now lives there himself. His solicitors say that any alleged breach of covenant has now expired. I can find no suggestion anywhere in the papers before me that deeds of covenant of the sort specified in clause 2.6.6 of the lease were entered into, and certainly no copies of any such deeds have been produced to me.

12. I note the final paragraph of the Respondent's solicitors letter to the Tribunal dated 15th February 2008 in which they say "To suggest that there was a breach of covenant because a direct covenant had not been entered into when this had never previously been drawn to our client's notice is an affront to commonsense." It appears to me that it was a matter for the Respondent to have familiarised himself with the terms of a lease that he entered into, and that it is hardly open to him, as the letter seems to seek to do, to place the blame on some other unspecified person whom he may consider should have told him about the provision.
13. I therefore have little alternative but to determine that there has been a breach of the provisions of clause 2.6.6 in the terms alleged but I record that, on the information before me the Respondent has been in occupation of the property since 2nd February 2008 so that the breach that has occurred is no longer continuing.
14. As to the second allegation, that of nuisance in contravention of the provisions of clause 3.6.1 of the lease, the Respondent says in his letter of 9th April that he received complaints from persons named Sarah and Janet (whom I take to have been the tenants of another flat or of other flats in the building) about noise over a two year period, and that he tried to deal with them. It is clear that someone recorded the occurrences referred to in the application. On the information before me I am content that there has been sufficient noise emanating from the Respondent's flat at various times to have caused one or more occupiers to keep a note of it, and that they would have been unlikely to have done so had it not been a nuisance (of whatever degree) to them.
15. I therefore conclude that there has been a breach of clause 3.6.1 of the lease in that occupiers of the flat have made a noise on occasions that has been a nuisance to other occupiers in the block. I record that there is no evidence before me of any breaches of this provision since December 2007, and certainly of none since the Respondent resumed occupation of the flat in February 2008.
16. As to the allegation that the occupation of the flat by three persons is of itself a breach of the terms of clause 3.6.1 of the lease, it has not been explained to me how such an occupation, even if proved, of itself amounts to a breach of the covenant. There is hearsay evidence in paragraph 9(c) of the application that such was the case, and evidence of various comings and goings at the flat on some occasions, but no more. I do not feel able to conclude on that evidence that there was necessarily any occupation by three persons, at least on any

permanent basis. Furthermore, I do not feel able to conclude from the very limited information that is before me on this specific point (as opposed to the 'noise' point) that even if there were such occupation of the flat for any significant period of time that would of itself necessarily amount to a breach of the covenant. At the most I can only conclude from the information in the application that there were three people at the flat on some occasions, apparently in the daytime, who sometimes made a noise that other occupants regarded as a nuisance.

A handwritten signature in black ink, appearing to read 'Robert Long', written in a cursive style.

Robert Long
25th April 2008