



Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Commonhold and Leasehold Reform Act 2002 section 168

LON/00AW/LBC/2009/0015

Premises: Flat 1, Bramley Arms, Bramley Road, London W10 6SZ

Applicant-Landlord: Scott Davidson Ltd

Respondent-Tenant: Mr Emmil Watson

Tribunal: Mr Adrian Jack (Chairman)

Background

1. The applicant landlord by letter of application dated 5th February 2009 applies for a determination that the respondent tenant is in breach of the various covenants of his lease of the premises.
2. The Tribunal gave directions on 10th March 2009 which provided for the tenant by 8th April 2009 to serve a bundle with his detailed case and the documents on which he relied. The tenant failed to comply with this direction. His only contact with the Tribunal was by telephone on 24th April 2009 in which he indicated that he was attempting to evict the undertenant occupying the flat. Since this matter is only relevant to any application by him for relief from forfeiture, the Tribunal did not consider it necessary to give the landlord an opportunity to comment on his oral representations.
3. The Tribunal also indicated in its directions that it considered that this matter was suitable for determination on paper without a hearing, but said that either party could request a hearing. Neither party has made such a request so the Tribunal now proceeds to determine the landlord's application.

The lease

4. The tenant holds under a 999 year lease from Michaelmas 1989 granted on 22nd December 1989. The lease contains the usual provisions for forfeiture in the event of the tenant breaching the covenants of the lease.
5. By paragraph 16 of the Third Schedule to the lease the tenant covenanted: "Not to do or permit or suffer to be done upon the Demised Premises or any part thereof any act or thing which may be or become a nuisance annoyance damage or inconvenience to the Lessor or the owners or occupiers of any other part of the Property or any neighbouring property."
6. In addition paragraph 2 of the Fourth Schedule to the lease provides that: "No musical instrument television radio loudspeaker or mechanical or other noise making instrument of any kind shall be played or used nor shall any singing be practised in the Demised Premises so as to cause annoyance or the owners lessees or occupiers of other flats comprised in the Property or so as to be audible outside the Demised Premises between the hours of 11.00 pm and 7.00 am."
7. By paragraph 20(iii) of the Third Schedule the tenant is prohibited from underletting or parting with possession of the flat without obtaining a direct covenant by the underlessee to observe the covenants of the lease. Paragraph 21 provides that the tenant must inform the landlord within one month of all such underletting.

The facts

8. The landlord says that the tenant has underlet the property to a Mr Wass without obtaining any covenant from him to observe the covenants of the lease and without informing the landlord of the underletting.
9. The landlord also complains of repeated incidents of flooding from the property. On 30th May 2008 there was a leak from the boiler which resulted in the basement flooding. On 12th June 2008 there was an overflowing bath, caused when the occupier passed out in a drunken stupor. On 9th December 2008 there was a further leak from the boiler. On 31st December 2008 there was a leak from an overflowing bath. On 5th January 2009 it was discovered that the ceiling of the kitchen in the ground floor offices had collapsed. Over the weekend of 21st and 22nd March 2009 there was a further leak.
10. The landlord also complains of sixteen incidents where the occupier of the flat has played loud music, some recorded, some live on a bass guitar with a drum track, and has moved furniture around causing loud noise. The landlord also complains of the amplified singing, which is said to be particularly out of tune. All of the incidents of which the landlord complains occurred during the day, the earliest starting at 9 am, the last at 5.30 pm, with the majority between noon and 2 pm. The incidents all lasted less than an hour.

Determination

11. The tenant has failed to respond to the landlord's allegations or the witness statement served by the landlord. Accordingly I find the facts alleged by the landlord are proved. This, however, does not automatically mean that the tenant is in breach of the covenants as alleged by the landlord.
12. In relation to the underletting to Mr Wass without obtaining a covenant from him in favour of the landlord, this in my judgment is a plain breach of paragraph 20(iii) and I find it proved. Likewise in relation to the tenant's failure to inform the landlord of the underletting, I find the breach of covenant proved.
13. In relation to flooding, the position is more difficult. The landlord does not allege that the tenant himself was personally responsible for the leaks. The landlord therefore needs to show that the tenant "permitted or suffered" the leaks to occur. In some cases it can be inferred from the frequency and ubiquity of flooding that the tenant has impliedly permitted or suffered what his tenant is doing. However, in order to draw this inference it is necessary to show that the tenant has some knowledge of the undertenant's behaviour. In the current case there is no evidence that the tenant was aware of the leaks. The landlord does not allege, for example, that it wrote to the tenant. The landlord does not explain what the tenant should in concrete terms have done which he failed to do.
14. The burden of showing a breach is on the landlord. In my judgment it has failed to show that the tenant here has permitted or suffered the leaks to occur. Accordingly this breach of paragraph 16 of the Third Schedule is not proved.
15. The position is otherwise in relation to the playing of loud music and making other noise. The prohibition in Schedule 4 is in absolute terms. The noise caused an annoyance to the tenant's neighbours and to the landlord. Thus even if the tenant was in complete ignorance of the undertenant's (un)musical activities and his noise-making there would be a breach. Accordingly in my judgment the tenant is in breach of paragraph 2 of the Fourth Schedule.
16. The landlord also alleges that the noise complaints are a nuisance in breach of paragraph 16 of the Third Schedule. For the same reason as the landlord fails to establish liability in respect of the leaks he fails to establish a noise nuisance.

Costs

17. The landlord seeks a determination that it is entitled to charge the costs of the current application as costs incidental to the preparation and service of a section 146 notice. In my judgment this matter is not properly before the Tribunal. If the tenant obtains relief from forfeiture in the County Court, then no doubt the Court will consider whether and to what extent the tenant should pay the cost of the current proceedings as a condition of relief from forfeiture. Insofar as the tenant avoids forfeiture without the need for Court proceedings, the landlord can bring an application to the Tribunal either under section

27A of the Landlord and Tenant Act 1985 or under Schedule 11 to the
Commonhold and Leasehold Reform Act 2002 to determine that issue.

Determination

18. Accordingly the Tribunal determines that the applicant is in
breach of the terms of his lease, as set out above.

A handwritten signature in black ink that reads "Adrian Jack". The signature is written in a cursive, flowing style.

Adrian Jack

27th April 2009