First-tier Tribunal
Property Chamber
(Residential Property)

9221

Case reference	:	**CAM/22UN/LBC/2013/0006**
Property	:	**Flat 5, 2 Penfold Road, Clacton-on-Sea, Essex CO15 1JN**
Applicant	:	**G & O Securities Ltd.**
Respondent	:	**Joanne Leonie Offord**
Date of Application	:	**24th June 2013**
Type of Application	:	**For a determination that the Respondent is in breach of a covenant or condition in a lease between the parties (Section 168(4) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"))**
Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. The Tribunal's decision is that the Respondent is not in breach of clause 3.1.7.2 of the lease of the property dated 13th November 2008.

Reasons

Introduction

2. The Applicant has applied to the Tribunal for a determination that the Respondent is in breach of clause 3.1.7.2 of the lease. The application form states that clause 3.1.7.2 is in the following terms:-

> *"Save for letting under an assured shorthold tenancy not at any time to transfer assign sublet or part with possession or occupation of the whole of the Property or permit or suffer the same to be done unless there shall previously have been executed at the expense of the Tenant and delivered to the Landlord for retention by them a Deed expressed to be made between the Landlord of the first part the Tenant of the second part and the person or persons to whom it is proposed to transfer assign sublet or part with possession as aforesaid of the third part whereby the person to whom it is proposed to transfer assign sublet or part with possession shall covenant*

for himself and his successors in title at all times from the date of transfer assignment sub-letting or parting with possession to observe the covenants on the part of the Tenant herein contained including the covenant contained in this sub-clause but excluding in the case of a subletting the covenant to pay the rents hereby reserved provided always that the Landlord shall not himself be required to execute such a Deed".

3. Evidence to support the application is in the bundle lodged by the Applicant for this determination and this takes the form of a written statement by Christopher John O'Dell – a director of the Applicant company – which sets out that the Respondent purchased her leasehold interest in the property on or about the 15th July 2010 and such interest was registered on the 28th July 2010. By co-incidence, the Applicant was registered as the proprietor of the freehold title on the 22nd July 2010. Despite chasing, no Deed of Covenant has been received by the Applicant.

4. The form of application said that the Applicant was content for this matter to be dealt with on a consideration of the papers only. The Tribunal agreed and in the directions order made by the Tribunal chair on the 4th July 2013, it was said that the Tribunal considered that it could deal with this matter on paper with the necessary written representations from the parties on or after 27th August 2013.

5. The parties were informed that they could seek an oral hearing at any time prior to the 16th August 2013. No such request was received. Indeed, nothing has been received from the Respondent.

The Law

6. Section 168 of the 2002 Act introduced a requirement that before a landlord of a long lease could start the forfeiture process and serve a notice under Section 146 of the **Law of Property Act 1925** ("the 1925 Act") he must first make "*...an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred*".

The Lease

7. In the hearing bundle was a copy of the counterpart lease which is for a term of 99 years from 1st January 2004 with an initial ground rent of £495 per annum which is subject to review. Clause 3.1.7.2 is as quoted by the Applicant in the application form.

Conclusions

8. It is clear that the requirement to prepare and arrange for execution of the Deed of Covenant when assigning the leasehold interest lies with the existing lessee prior to the transfer. The clause itself says that the Deed must have been 'previously' executed and delivered to the landlord i.e. prior to the assignment. At that time the lessee was not the Respondent but, according to the Notice of Assignment at page 44 in the bundle, one Arturas Nekrosius.

9. Thus the failure to have this Deed executed lies not with the Respondent but with the previous holder of the leasehold interest. In

these circumstances, it is not this Respondent who is in breach but the previous holder of the leasehold title.

10. It is also worth noting – although it is not determinative of this application in any way – that the evidence produced by the Applicant makes no mention of any enquiries have been raised with their predecessors in title as to whether they might have received the Deed. It will be recalled that the Applicant became the freehold owner within days of the Respondent obtaining her leasehold interest and neither she nor the previous owner's solicitors might have known of the existence of the Applicant.

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Bruce Edgington
Regional Judge
20th September 2013