



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

| | | |
|--|---|---|
| Case Reference | : | LON/OOBK/LBC/2015/0076 |
| Property | : | Flat 4, Rayham, Norfolk Crescent, London W2 2PG |
| Applicant | : | Raynham Freehold Company Limited |
| Representative | : | Dale and Dale Solicitors |
| Respondents | : | Raynham Holdings Limited |
| Representative | : | No appearance |
| Type of Application | : | Declaration as to a breach of covenant – section 168(4) Commonhold and Leasehold Reform Act 2002 |
| Tribunal Members | : | Judge Robert Latham Hugh Geddes RIBA MRTPI |
| Date and venue of Paper Determination | : | 22 October 2015 at 10 Alfred Place, London WC1E 7LR |
| Date of Decision | : | 22 October 2015 |

DECISION

The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2009, a breach of the lease has occurred in that the Respondent has sublet its flat without having first obtained the Lessor's written consent.

The Applications

1. By an application dated 17 August 2015, the Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) that the Respondent tenant is in breach of Clause 4(b) of its lease in that it has sublet its flat without having first obtained the Lessor’s written consent. The address of the Respondent is given as Flat 4 Raynham, Norfolk Crescent, W2 2PG, namely the subject flat.
2. On 24 August 2015, the Tribunal gave Directions. The Tribunal was satisfied that the matter could be determined on the papers but permitted either party to request an oral hearing. On 25 August, the Tribunal sent a copy of the directions to the Respondent at the subject flat.
3. On 1 September, the Applicant sent the Tribunal Office Copy Entries. The Respondent has no mortgage on the subject flat. It is incorporated in the British Virgin Islands.
4. Pursuant to the Directions, on 17 September, the Applicant sent the Respondent and the Tribunal a copy of the bundle of documents upon which it sought to rely. By 25 September, the Respondent was required to send to the Applicant and the Tribunal its bundle of documents in response. No Bundle was provided.
5. On 30 September, the Applicant notified the Tribunal that there had been no response from the Respondent. The Applicant was content for the matter to be determined on the papers. On 13 October, the Tribunal telephoned the Applicant’s Solicitor. Mr Comfort confirmed that the only correspondence address that they had for the Respondent was the subject flat. This was the address to which the landlord sent all documents and demands. The Respondent had always actioned these and paid in accordance with the requests. Mr Comfort had never written to the Virgin Islands.

The Law

6. Section 168 of the 2002 Act provides as follows:
 - (1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.
 - (2) This subsection is satisfied if—
 - (a) it has been finally determined on an application under subsection (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.

(3) But a notice may not be served by virtue of subsection (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.

(4) 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.

The Lease

7. By Clause 4 and Paragraph 4(b) of the Fifth Schedule, the Lessee covenants:

“not (but without prejudice to the other previous provisions in this Lease contained) to assign underlet or part with possession or occupation of the whole of the demised premises without the written consent of the Lessor first obtained such consent not to be unreasonably withheld”.

The Background

8. We have been provided with a statement from Daniel Weil, a Director of Parkgate Aspen Limited, the managing agents. Many of the lessees are shareholders in the Applicant Company. The directors have become concerned that flats are being let out on very short holiday lets without the requisite consents having been obtained. The porters at the building have therefore been instructed to complete a form themselves or have a sub-tenant complete a form giving details of any subletting.
9. Attached to the application form is a form which was apparently “completed in front of the porter”. It is marked A4. It is undated. The name of the tenant is stated to be “Emad Al Kandar”. His contact details are given as a mobile telephone number. The tenancy commencement date is stated to be “2/month July”. The length of the term is stated to be “2 month”. The letting agent is stated to be “Plaza”.
10. Mr Weil states that the Respondent has not sought the Applicant’s prior written consent to any subletting and more particularly the sub-letting to Emad Al Kandar. He asserts that this occurred “in July 2015 for a period of 2 months as evidenced in the form completed by Emad Al Kandar in the presence of one of the Applicant’s porters”.

11. The Applicant did not write to the Respondent before issuing this application.

Our Determination

12. On the balance of probabilities, the Tribunal finds that in July 2015, the Respondent sublet its flat to Emad Al Kandar for a period of two months, without having first obtained the Lessor's written consent. It is thereby in breach of Clause 4 and Paragraph 4(b) of the Fifth Schedule of its lease.
13. The Tribunal records that it is not impressed by the quality of the evidence adduced by the Applicant in support of its application. There is no witness statement from the porter. His identity is not provided. The form is undated. Mr Weil does not give the source of his information as to how the form came to be completed. However, the Applicant is only required to prove its case on the balance of probabilities. The evidence that it has adduced is uncontradicted. We are therefore satisfied that the Applicant has adduced the bare minimum to prove its case.

Judge Robert Latham

22 October 2015