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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LBC/2014/0082**
Property	:	**12th Floor Flat , 67 George Lansbury House London N22 5PE**
Applicant	:	**The Mayor and Burgesses of the London Borough of Haringey**
Representative	:	**Mr R Ricks Counsel**
Respondent	:	**Mr B Cowan, Tenant**
Representative	:	**Mrs T Davidson Solicitor**
Type of Application	:	**Breach of covenant**
Tribunal Members	:	**Mrs F J Silverman Dip Fr LLM** **Mr P Tobin FRICS**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **10 December 2014**
Date of Decision	:	**10 December 2014**

DECISION

Decision of the tribunal

The tribunal determines that the Respondent Tenant is in breach of covenant in relation to Clause4 (14) of his lease.

The Tribunal makes no order for costs.

Reasons

1 By an application dated 16 October 2014 the Applicant landlord sought a declaration from the Tribunal that the Respondent tenant was and remains in breach of covenant of his lease. Directions were issued by the Tribunal on 23 October 2014.

2 The matter was heard by a Tribunal on 10 December 2014 at which the Applicant was represented by Mr R Ricks and the Respondent by Mrs Davidson.

3 The Applicant landlord is the freeholder of the building at 67 George Lansbury House Progress Way London N22 5PE.

4 The Respondent is the tenant of the 12th floor flat in the building .

5 The lease under which the Respondent holds the property is dated 15 March 2004 for a term of 125 years from the same date and was made between the Applicant of the one part and the Respondent of the other part.

6 Clause 4 of the lease contains a number of covenants given by the tenant including:

"(14) Not to use the Flat or any part thereof nor allow the same to be used for any illegal or immoral purpose nor to hold therein any sale by auction".

7 On 28 June 2013 the Respondent pleaded guilty at Wood Green Crown court to a charge of producing a Class B Controlled Drug namely Cannabis, contrary to s4(2) Misuse of Drugs Act 1971 within the property. An injunction excluding him from the property expired in June 2014.

8 The production of a Class B controlled drug is an illegal act and constitutes a breach of clause 4 (14) of the lease. The illegal use of the property had ceased as at the date of the Tribunal hearing.

9 For the Applicant it was argued that the Respondent's breach was irremediable and had tainted the entire building. The Applicant has refused to accept rent from the Respondent since 10 June 2013 and therefore asserts that it has not waived the breach.

10 The Respondent said that the illegal use of the premises had ceased and therefore the breach had been remedied. He said that he had only ever grown Cannabis for personal medical use having been diagnosed with MS.

11 Two types of covenant are in law deemed to be incapable of remedy, namely: covenants relating to alienation and those relating to illegal or immoral user. In such cases the breach is both a continuing and irremediable breach irrespective of the fact that at the time of any forfeiture proceedings the illegal or immoral user or unlawful sub-letting has ceased and the tenant promises to abide by the covenant in future (see Rugby School v Tannahill [1935] 1 KB 87; Patel &Anor v K & J Restaurants and Anor [2010] EWCA Civ 1211).

12 In the light of the above cases the Tribunal has little option but to find that the Respondent's breach of covenant is a breach of his lease which is both continuing and irremediable.

13 This does not however preclude him from seeking relief against forfeiture in the event of such action being taken against him by the Applicant.

14 The Applicant sought to claim costs from the Respondent under Rule 13 of the Tribunal Rules of Procedure. He produced a schedule of costs totalling £1,581 which he said had been incurred in the preparation of this case. The Applicant failed however to make any assertion of unreasonable conduct against the Respondent or to produce evidence to demonstrate the application of Rule 13 in this case. The Respondent's solicitor produced evidence from her client's bank account to show that her client was in receipt of benefits and was therefore not in a position to satisfy any costs order which might be made against him.

15 Having considered the representations of both parties the Tribunal declines to make a costs order because no evidence of the Respondent's unreasonable conduct was asserted by the Applicant and the Tribunal could not see any evidence of such conduct in the papers before it.

16 **The Tribunal Procedure (First Tier Tribunals) (Property Chamber) Rules 2013**

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—

(i) an agricultural land and drainage case,

(ii) a residential property case, or

(iii) a leasehold case; or

(c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.
(3) The Tribunal may make an order under this rule on an application or on its own initiative.
(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.
(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.
(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

17 **Commonhold and Leasehold Reform Act 2002 168**

No forfeiture notice before determination of breach

(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 a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5)But a landlord may not make an application under subsection (4) in respect of a matter which—

(a)has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b)has been the subject of determination by a court, or

(c)has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Name: Judge Frances Silverman as Chairman **Date:** 10 December 2014

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.