FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LBC/2014/0098**
Property	:	**33 Cholmley Gardens, Fortune Green Road, London NW6 1AG**
Applicants	:	**Cholmley Gardens Limited**
Representative	:	**DAC Beachcroft LLP** **Counsel- Mr Carl Fain instructed by the above**
Respondent	:	**Mr P.S Latto** **Ms S.G Latto**
Representative	:	**Russell-Cooke LLP** **Counsel-Mr Kester Lees instructed by the above**
Type of Application	:	**Application for a determination under Section 168 (4) of THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002 in respect of whether the Respondent has breached a covenant in the lease**
Tribunal		Ms M W Daley LLB (hons) Mr M Taylor FRICS Mrs Walters MA
Date of Hearing	:	**10 April 2015 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**27 May 2015**

DECISION

The tribunal makes the determinations as set out in paragraphs 65 of this Decision

The application

a. The Applicant on 10 December 2014, made an Application for an order that a breach of covenant or condition in lease had occurred pursuant to Section 168(4) of the Commonhold and Leasehold Valuation Act 2002.

b. The background to this matter was set out in the grounds of the Application which stated-: "*The building and gardens known as Cholmley Gardens is a high –value (listed) block of flats which is owned by the Applicant which is a management company whose members comprise the leaseholders of the building. The Applicant wishes to maintain the character of the building which is that it is occupied by long-term leaseholders who have a stake in the building. This has been the case for many years and explains the absolute prohibition against assignment of part of each flat and against subletting of each flat. The Applicant has made the Respondents aware that subletting of the Property will not be permitted but the Respondents have proceeded to enter into a tenancy agreement. This action is in clear breach of the covenant at 3.(K)(ii) ...*"

c. The actions were alleged to have been carried out by the Respondents who did not accept that a breach of covenant had taken place.

(2) Directions were given on 23 December 2014. The directions were settled on the papers without a case management conference.

(3) The directions stated at paragraph 4, that -: "*...The tribunal will reach its decision on the basis of the evidence produced to it. The burden of proof rests with the applicant. The Tribunal will need to be satisfied: (a) that the lease includes the covenants relied on by the applicant; and (b) that, if proved, the alleged facts constitute a breach of those covenants.*"

(4) The Directions also provided that the parties send to the Tribunal, and exchange bundles of documents by 27 February 2015, and thereafter that the matter be set down for hearing on 11 March 2015.

(5) As a result of a request for a postponement, the matter was adjourned until 10 April 2015.

The Background

(6) The Premises are a ground floor 2 bedroom flat situated in 4 separate purpose built blocks of 165 residential flats.

(7) The Respondents hold a long lease of the flat, which requires the landlord to provide services and the Respondent leaseholders to observe specific covenants under the terms of the lease. The specific provisions of the lease will be referred to below, where appropriate.

The Hearing

(8) At the hearing the Applicant was represented by Mr Carl Fain counsel. The Respondents were represented by Mr Kester Lees, also counsel.

(9) Also in attendance on behalf of the Applicant was Jonathan Smith, Solicitor from DAC Beachcroft LLP, Solicitors and Mr Owain Franks, the Chairman of the Applicant Company.

(10)In attendance on behalf of the Respondents was Mr Ed Cracknell, solicitor from Russell-Cooke LLP. The Respondents, who were residing abroad, were not in attendance.

(11) At the hearing the following additional documents were provided-:

(i) The Applicant's Counsel's Skeleton Arguments.

(ii) The Respondents' Counsels Skeleton Argument and bundle of legal authorities

(12)At the hearing, Mr Fain, Counsel for the Applicant set out the following issues for the Tribunal to determine-:(1) Whether Clause 3K of the lease(ii) provided an absolute prohibition against subletting (2) Whether the Respondents asked for consent to sublet the premises (3) If clause 3K was qualified, had the Applicant unreasonably refused permission to sublet the premises.

(13) Counsel for the Respondent Mr Lees, agreed that those were the issues, (subject to the addition of a fourth issue) for determination. Counsel for the Respondent added a further issue which was whether the provisions of the Landlord and Tenant Act 1988 were engaged.

(14) Mr Fain submitted that if the Tribunal accepted that there was an absolute prohibition against subletting, that is, if the Applicant succeeded on the first issue, then the Tribunal would determine the matter in the Applicant's favour, regardless of the factual findings on issues 2 and 3.

(15) If the Tribunal were not convinced that there was an absolute prohibition, then it would be necessary to determine issues 2 and 3. If the Tribunal decided that no request for permission had been sought then the Housing Act 1988 would not be engaged. The Tribunal stated that it would hear from each party on the issues in turn before considering the next issue.

(16) The factual background to this matter was as follows. That on 21 July 2008, Mrs Sarah Latto wrote to the board of the Applicant freehold company, and informed them that her husband Paul Latto had been posted to his company's Dubai office. In the email of the same date Mrs Latto stated as follows-: *"... our family... will be moving to Dubai for a period of time. I am therefore writing to request the Board's consent to let our flat, number 33 while we are away. We propose to let the property through one of the larger, established local estate agencies on a managed basis. The contract for my husband's posting is one year, though the understanding is that is extendable. Hence, we would like to ask permission for a two year letting period, commencing on or after we leave in mid -September. We will of course, not least because Cholmley Gardens remains our ultimate home, take special care to ensure the letting is only to appropriate, trustworthy tenants...we will be responsible for our own accommodation in Dubai(which is a standard employment arrangement in the current markets) which means we have to, and are expected to , rent our flat here..."*

(17) In the witness statement of Owain Franks, the Applicant set out the Applicant's policy in relation to subletting at paragraph 4-: *The Company recognises that sometimes circumstances change and it is occasionally necessary for a leaseholder to live somewhere other than in their flat. The Board accepts only a limited number of extrinsic reasons for such changes mainly being relocation by employer or the need to care for a severely ill family member In such circumstances the company has always been prepared to agree, on a short-term basis, not to enforce the Prohibition(2the Concession")*

(18) At the hearing Counsel for the Applicant Mr Carl Fain, referred the Tribunal to the witness statement of the Respondent, Mr Paul Latto. In paragraph 15 of the Witness Statement, Mr Latto accepted that the flat was sublet in July 2014. Mr Fain stated that both parties agreed, that the alleged breach of covenant for which a determination under Section 168(4) of CLARA2002 was sought, was limited to this breach.

(19)Counsel referred the Tribunal to the lease, clause 3 K of the lease stated as follows-: By cl 3(K)(ii) of the lease the tenant covenants:

"Not at any time to Assign part only of the demised premises nor at any time to underlet or part with possession or occupation of the whole or of part only of the demised premises and not during the last seven years of the term hereby granted to assign the demised premises without the previous consent in writing of the Lessor such consent not to be unreasonably withheld in the case of a responsible individual."

(20) Counsel stated that clause 3(K) provided an absolute prohibition against subletting, and that on reading of the lease, the meaning was clear, that the prohibition was absolute. The second part of the wording of the lease-: "not *during the last seven years of the term hereby granted to assign the demised premises without the previous consent in writing of the Lessor such consent not to be unreasonably withheld in the case of a responsible individual* "; was to be read disjunctively, and as such, was not a qualification to the absolute prohibition in the lease. He argued that if the qualification applied to the whole of the clause, the wording "nor" rather than "not" would have been used.

(21) Counsel referred the Tribunal to clause 3(G) of the lease by way of contrast. This was a clause in which the qualifying provision to the term of the lease was expressed first. Clause 3(G) stated-: *"Not without the previous written consent of the Lessor to make any structural alterations or additions to the demised premises..."*

(22) Counsel argued that if the wording in the second part of 3(K) was meant to qualify the absolute prohibition against sub-letting, then the qualification would have been expressed first, in the same manner as occurred in clause 3 (G).

(23) In the Skeleton argument prepared on the Applicant's behalf, counsel stated-: *"It follows that by using the words 'and not' it denotes that the last part of the clause is to be read separately to the first part of the clause. This is what a reasonable person with all the background knowledge at the date of the lease would have understood the clause to mean."*

(24) Counsel stated that there was no prohibition preventing the assignment of the whole of the flat and referred to clause 3(L) of the lease.

(25) The lease had been designed to ensure an estate with owner occupied flats; this was why there was an absolute prohibition against underletting. Counsel stated at paragraph 14 of the skeleton Argument that -: *"The reason why the whole of cl 3(K) (ii) is not qualified is because there is no prohibition in the lease preventing assignment of the whole of the flat (other than to a company or another lessee – cl 3(L)). Thus the purpose of cl 3(K) (ii) is to prevent assigning part of the Flat and to prevent subletting of the whole or part of the Flat. The qualification is only in respect of assigning the lease in last seven years of the term."* This provision had been necessary as at the time the lease was created in the 1970's no extensions of the lease had been possible and the lease would have run to term and thereafter the occupant would have become a Rent Act tenant, that was why the wording (referred to in paragraph 18) had been necessary.

(26) Counsel referred the Tribunal to the witness statement of Mr Owain Franks Chairman of the Board of Directors, in his written and oral

evidence he referred to the objectives of the landlord, which was to ensure that the flats were occupied by those who had long leases, who had an obvious investment in ensuring that the estate was maintained to a high standard in terms of behaviour and cleanliness. This was set out in the document "*Living here*" accessed from the Cholmley Gardens website. (Which the Applicant invited the Tribunal to inspect).

(27) There was also a Leaseholder's Handbook which was quoted from, in the witness statement of Mr Franks. The section was headed Subletting-: *Subletting is prohibited under the terms of the lease...In exceptional circumstances, such as a leaseholder being transferred for work outside of London..."*

(28) The Tribunal noted that the Applicant owned flats on the estate which were let out. The Tribunal queried the basis upon which these flats were let.

(29) Mr Franks stated that the flats were let at market rent, and there was also provision for one of the flats to be occupied by a porter. All of the flats were let on short hold assured tenancies, and the landlord had complete control over who the flats were let to, in the Applicant's view this preserved the character of the building.

(30) The Respondent's position was set out in the witness statement of Paul Latto at paragraph in which he stated-*"... 3. Contrary to what is alleged by the Applicant, the disputed provision in the Lease (Clause 3(K) (ii) contains a fully qualified prohibition on subletting by which I mean that the Lease permits me to sub-let the Flat with the Landlord's consent, which consent may not unreasonably be withheld. At all material times. I have either had the landlord's express consent to sub-let, or consent has unreasonably been withheld...5. We have sub-let to responsible and suitable tenants on an assured shorthold basis with the full knowledge (and, initially, consent) of the Applicant since we left for the Middle East..."*

(31) Mr Lees, counsel for the Respondent, stated that the Respondents did not accept the Applicant's construction, or interpretation of the lease provisions.

(32) Mr Lees stated that the two parts of clause 3 (K) of the lease were linked by the use of the word "and" and as such the qualification applied to the whole of the clause. The use of "and" effectively tied together the first and the second phrase. In his view this clause had a "plain and simple meaning; he stated that "The *Covenant is a qualified covenant in respect of sub-letting. Firstly, the specific language used qualifies the obligation with respect to sub-letting. The use of the disjunctive 'nor' divides the sub-letting obligation from the prior assignment of part obligation, whereas the use of the conjunctive 'and' links the underletting phrase with the non-assignment in the last 7 years phrase:*

(33) Mr Lees also stated that the lease had to be read as a whole. As it was clear from other parts of the lease that subletting was envisaged. Counsel in his skeleton argument stated-: "Clause 6(A) refers to the '*neglect or default of any Lessee tenant or occupier of any other flat...*'; and

By clause 2 of the Lease the lessee covenanted to observe the regulations set out in the First Schedule which is headed: '*Regulations to be observed by Lessees Tenants and Occupiers of Flats in the Building*'.

If sub-letting or parting with possession were absolutely prohibited such provisions and references as to 'tenants' (other than Lessees) and especially 'occupiers' would be superfluous. By contrast, if the Covenant is qualified then such usage throughout the Lease is entirely consistent."

(34) Counsel also referred to the first schedule of the lease, which in the heading stated "*Regulations to be observed by Lessees Tenants and Occupiers of Flats in the Building*", from this it was clear that the lease envisaged third parties. Counsel for the Respondents stated that unless the Tribunal was persuaded that the terms of the lease were abundantly clear then in the interpretation of the lease the Contra Proferentem rule ought to apply.

(35) Mr Lees submitted that fifthly, where there is any such ambiguity, .applying the *contra proferentem* rule, the Covenant is to be read against A (as lessor) seeking to rely on it and for whose benefit it was drafted, (*Lewison on The Interpretation of Contracts* at 7.08). "*This must especially be true where a landlord is seeking to obtain a windfall via forfeiture of Rs' home. Indeed, covenants restraining sub-letting are strictly construed against the landlord (Woodfall: The Law of Landlord and Tenant at 11.167; Russell v Beecham [1924] 1 K.B. 525, 536).*"

(36) Counsel also referred to Woodfall para 11.167 also page 367 para 7.08, Russell –v- Beecham, and Birchall-v- Raj Properties 2014 L and TR. Counsel also relied upon clause 5(c) of the lease at page 15 as supporting his interpretation that the landlord does not have to enforce the covenant.

Whether the Respondent asked for consent to sublet the premises

(37) Mr Fain stated that the short answer was no. Counsel referred to the email received from the Respondent dated 22 July 2014 sent by Mrs Latto in her email she stated -: "*...We are writing to notify you that our current tenants are leaving ...We propose to rent to new tenants under a new assured shorthold tenancy...*"

(38) Counsel stated that the email expressed the Respondents' intention it was simply saying "I am going to". This in Mr Fain's submission was not an email sent for the purpose of seeking permission. Further he stated that-: "*If consent is not requested prior to the transaction then it does not matter however unreasonable a refusal would be by the landlord, the tenant is in breach of covenant...*"

(39) In reply Mr Lees stated that the email should be read as a whole that is that the Respondents were asking for consent to sub-let the premises. The focus should be on the word "Propose". This meant that Respondents where proposing a course of action for which permission was being sought.

(40) The Tribunal queried whether there was a permission template. Mr Fain referred to the Sub-Leasing form which had been completed by the Respondents and signed on 24/8/08. This had also been referred to as the application for permission by the Applicants.

(41) Mr Lees stated that this form had not always been used To support his contention he referred to the subletting which had taken place in 2010. He submitted that this had been dealt with entirely on the basis of emails sent by the Respondents in 2010.

(42) Mr Lees further referred to a letter from DCA Beachcroft dated 24 July 2014. From this letter it was clear that legal proceedings for a declaration were being contemplated by the Respondents. The Respondents were under the impression that the Applicants were considering their position on the Respondents submissions. It was for this reason that the Respondents in the email sent by Ms Latto asked that the status quo should be preserved.

(43) Counsel for the Respondents noted in the letter seeking permission to sublet dated 21st July 2008; the Respondent uses the wording- *"... We propose to let the property"* In Mr Lees view the use of the word *propose* in the email was consistent with permission being sought. Mr Lees submitted that the email was consistent with consent having been sought by the Respondent.

Has the Landlord unreasonably refused permission to sub-let?

(44) Mr Lees submitted on behalf of the Respondent, that consent to sublet had been unreasonably refused. If Mr Lees submissions were accepted by the Tribunal, then section 1 (3) of the Landlord and Tenant Act 1988 applied.

(45) Mr Fain disputed this, he submitted on behalf of the landlord, that the 1988 Act was not engaged-: *"S.1 (3) LTA 1988 does <u>not</u> apply by virtue of the fact that this section only applies if an application for consent is served in accordance with cl 10(3) of the lease. Section 5(2) of the LTA 1988 stated that An application or notice is to be treated as served for the purpose of this, Act if (a) served in any manner provided in the tenancy, and (b) in respect of any matter for which the tenancy makes no provision, served in any manner provided by section 23 of the Landlord and Tenant Act 1927.*

(46) Clause 10 (3) of the lease provided that the notice would be deemed to be served if served in accordance with either the above provisions of the 1927 act or Section 196 of the Law of Property Act 1925. This provided that notices should be in writing. The LTA 1927 further provided that notices should be served in the following manner; personally, or by leaving it at the last known abode in England or Wales or by sending it through the post in a registered letter.

(47) Mr Fain submitted that service by email was not accepted by the Landlord and accordingly the Application for consent was not served on the landlord, and there was no obligation to consider the application for permission to sublet, any refusal to give permission could not be deemed to have been unreasonable.

(48) Counsel further relied upon *E'ON UK Plc v Gilesports Ltd [2013] L&TR 4 Mr Justice Arnold §§50-54*

(49) Mr Lees stated that *Gilesport* was not authority for how you interpreted the 1927 Act. There was no authority on email service. Section 23 of the LTA Act 1927 was permissive, in referring to the manner in which notice

was permitted to be served under the lease. Given, that the wording was permissive, the Tribunal should consider what had actually occurred between the parties.

(50) It was clear that the Applicants had previously accepted service by email. In particular the Respondents' request for permission in 2010, was sent by email. In all probability the consent to sublet was given by the landlord in this way. This could be inferred by the fact that the Landlord accepts that consent was given, and the Landlord is otherwise unable to evidence it in writing.

(51) In Mr Lees submissions section 19 (1) of the LTA 1927 Act was engaged in paragraph 24 of his skeleton argument he stated-: "*The effect of a contravention of the proviso by an unreasonable refusal of consent is to release the tenant, in respect of that transaction for which consent has been refused, from his obligation to obtain consent.*"

(52) In accordance with section 1(3) of the 1988 Act, the landlord must give, if the consent is withheld, the reasons for withholding it. Therefore, under the 1988 Act, the landlord does have a duty to state his reasons for refusal; and he also has a duty to reach a decision within a reasonable time (Woodfall: The Law of Landlord and Tenant at 11.138).

(53) Counsel stated that-: "*In the instant case there can be no doubt that A has unreasonably refused consent. The application for permission was made on 22 July 2014 and was roundly rejected by the letter dated 24 July 2014 without the provision of any alleged reason/s whatsoever. Therefore, consent was refused but without reason and, inevitably therefore, unreasonably.* Counsel stated that the letter simply stated that the tenants would be in breach if they sublet, it failed to specify reasons

(54) Woodfall: The Law of Landlord and Tenant at 11.128, in dealing with the provisions of section 19 (1) stated, "*Section 19 (1) does not give the Tenant a right to damages for an arbitrary or unreasonable refusal of consent. It merely allows him in case of an arbitrary or unreasonable refusal, to assign without consent, or apply to the court for a declaration...*"

(55) In reply Mr Fain stated that consent had not been unreasonably refused. The applicant had given reasons for refusing permission, the onus was on the tenant to show that consent had been unreasonably refused. "The Board of Directors were not made up of sophisticated individuals", as such they did not consider the email on 22 July to be an application for consent to sublet, given this, and the board did not deal with it as such.

(56) In every case it was a matter of fact as to whether consent had been unreasonably withheld. In the skeleton argument Counsel stated-:

a. *The long lessees are all members of A. A is keen to ensure that the flats on the Estate remain owner occupied and to prevent the proliferation of buy-to-let landlords so as to maintain the high standards of behaviour and cleanliness on the Estate;*

b. *It is clear from the website that this policy is explicit;*

c. *The refusal is in line with its policy on subletting as contained in the Handbook;*

d. *A has never granted a concession for more than 3 years;*

(57) Counsel submitted that in the circumstances, if there was a refusal to an application to sublet, then it was reasonable.

Closing submissions

(58) Counsel for the Respondent stated that the reasons now advanced by Mr Fain on the Applicant's behalf were not the reasons for which consent to sub-let had been refused, indeed consent had been refused for no reason, this was clear. No reasons had been relied upon by the Applicant in their solicitor's letter dated 24 July 2014.

(59) The Applicant operated a blanket policy which smacked of hypocrisy, given the landlord's ownership of and letting of flats within the estate.

(60) Given the Landlord's belief that there was an absolute right to refuse permission to sublet, even if there were exceptional circumstances, after two years of subletting, this amounted to a blanket policy which had been unreasonably applied.

(61)The Respondents had requested permission, and given the Applicant's unreasonable refusal to consent the Respondent was able to go ahead and sublet without consent.

(62) Counsel for the Respondents in his skeleton argument made an application under Section 20C of the Landlord and Tenant Act 1985. On the following grounds-:

a. A has proceeded unreasonably in bringing this application in circumstances where the meaning of the Covenant is tolerably clear;
b. A has been fully aware of Rs' position on the true construction of the Covenant for years and has consistently taken significant periods of time to respond to Rs' correspondence;
c. A's obstructive (and inconsistent) behaviour (e.g. the one of the letter of 24 July 2014) has resulted in the necessity for this application.

(63) Section 20C was not directly considered at the hearing accordingly, the Tribunal in its determination have provided for the Application to be dealt with as set out below.

(64) Mr Fain on the Applicant's behalf stated that it was very clear to Mr and Mrs Latto what the Applicant's policy on subletting was, when the landlord said no they had in mind the absolute prohibition, and the reason that this policy was in place, however the Respondents had not sought consent, and given this the landlord had not unreasonably refused consent to sublet.

The Tribunal's decision and reasons for the decision

(65) The Tribunal has carefully considered the documentary evidence and submissions of both parties; and has reached the following determination.

i. Whether the Lease contained an absolute prohibition against subletting

i. The Tribunal considers that clause 3(K)(ii) of the lease to be capable of more than one interpretation Given this the Tribunal accepts the arguments advanced by Mr Lees that the lease is capable of the interpretation advanced by him on behalf of the leaseholders , that is, of a qualified prohibition against subletting.

ii. In coming to this decision the Tribunal has considered the whole lease, (it considered that given the ambiguity, it was appropriate to do so.)

iii. As the Tribunal considered the lease to be capable of more than one interpretation, the Tribunal has determined that the Applicant has failed to satisfy the Tribunal that there is an absolute prohibition against subletting.

iv. The Tribunal was assisted by the reading material and legal authorities referred to by the parties, in particular the Tribunal noted that where there is a covenant that restrains sub-letting, such a covenant must be strictly construed against the landlord; *Russell and Beecham (1923)* Scrutton LJ on considering a covenant against assigning or parting with possession" these covenants having been always construed by Courts of law with the utmost jealousy to prevent the restraint from going beyond the express stipulation...").

v. The Tribunal has accordingly determined that the interpretation of the lease must be applied *Contra Proferentem.*

vi. That is-: *"... Where there is a doubt about the meaning of a contract the words will be construed against the person who put them forward..." (The Canons of Construction, The Interpretation of Contacts fifth Edition).*

vii. The Tribunal therefore finds that the lease did not contain an absolute prohibition against subletting.

Whether by their email dated 22 July 2014 permission was sought to sublet the premises.

viii. The Tribunal has carefully considered the wording of this email together with the previous correspondence. The Tribunal considers that the email dated 22 July 2014, was very different in its character and tone to the previous correspondence sent by the Respondents. The email was written in the tone of the Respondent, Mrs Latto simply informing the Applicant of what the Respondents intend to do. Any additional information that was supplied, appears to the Tribunal to have the character of the Respondents justifying their choice of tenants, as being a reasonable and sensible, and being in keeping with those who normally occupy the building.

ix. The Tribunal noted that the wording of the request for permission dated 21 July 2008 stated-: *"... I am therefore writing to request the Board's consent to let our flat, number 33, while we are away..."*

x. The Tribunal considers that it is worthwhile considering, and contrasting the email dated 22 July 2014. *"... We are writing to notify you that our current tenants are leaving...We propose to rent to new tenants under a new assured shorthold tenancy. The Board will observe that we have maintained our invariable policy since 2008 of only letting to professional family units with young children.... As the*

Board will be aware, we have brought proceedings against Cholmley Gardens Limited for various declarations ... In a nutshell, the Board contends it wields absolute power in relation to sub-letting and we contend its powers are qualified...we have asked the court to rule on this question ...We have stayed these proceedings at the request of the Board's current lawyers, DAC Beachcroft... Pending the outcome of this exercise and the legal proceedings... we will continue to operate on the basis of the existing status quo, but do wish to notify the Board of the matters set out in this email..."

xi. In their reply to this email dated 24 July 2014, in the penultimate paragraph DAC Beachcroft state that they sought clarification of whether or not proceedings were in fact issued, the letter further suggest that the Applicant has not been served with any proceedings.

xii. This means that prior to the premises being let, the Respondents were aware, the Applicant was unaware of any proceedings, and there were at that stage no proceedings upon which the Respondents could at that stage be awaiting the outcome. This means that the Status Quo could not be preserved whilst awaiting the outcome of a non- existing event; effectively the Respondents were announcing their intention to sublet regardless of the views of the Applicant.

xiii. The Tribunal finds that in all the circumstances the Respondents' email cannot be construed as a request for permission to sublet.

xiv. The Tribunal finds that the Respondents did not seek permission/consent to sublet in the email dated 22 July 2014.

xv. The Tribunal having found this, have not found it necessary to determine whether the email complied with the requirements for service of notices in accordance with the lease or the terms of Section 196 of the Law of Property Act *1925 or 23 of the Landlord and Tenant Act 1927.*

xvi. As the Tribunal has found that no application for permission was made the Tribunal finds that 19(1) of the Landlord and Tenant Act 1927 and section 1 of the Landlord and Tenant Act 1988 ('the 1988 Act'), are not engaged.

xvii. At the hearing on 10 April 2015, The Tribunal did not specifically invite the Applicant's counsel to address the Tribunal on whether it opposed the Respondents application for a section 20 C of the Landlord and Tenant Act 1985 order. Given this, the Applicant is invited to respond to paragraphs 29 of the Respondents skeleton argument within 7 days.

xviii. **The Tribunal accordingly determines that on 30 July 2014, the Respondents sublet the premises contrary to the provisions of clause 3k of the lease, and accordingly committed a breach of covenant.**

Name: Ms M W Daley **Date: 27 May 2015**

Appendix of relevant legislation

A summary of the legislation is set out below

The Law

Appendix

Section 168 (2) of Commonhold and Leasehold Reform Act 2002

(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 covenant or condition in the lease has occurred.
(5) But a landlord may not make an application under (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