



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

Case Reference : **CHI/23UB/LBC/2016/0002**

Property : **4 Evelyn Court, Malvern Road,
Cheltenham, Gloucs, GL50 2JR**

Applicant : **Evelyn Court (Cheltenham) Limited**

Representative : **Mr. J. Simmonds**

Respondent : **Ms. L. J. Richards**

Representative : **In Person**

Type of Application : **Determination of an alleged breach
of covenant or condition of a lease
under S.168 Commonhold &
Leasehold Reform Act 2002.**

Tribunal Members : **Ms. A. Hamilton-Farey**

Date of Decision : **7 June 2016**

DECISION AND REASONS

1. The tribunal determines that the respondent, Miss L. J. Richards has breached the covenants set out at paragraphs 15 and 25 of the Seventh Schedule of the lease, in that she has sub-let the flat without making



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DECISION AND REASONS

1. The tribunal determines that the respondent, Miss L. J. Richards has breached the covenants set out at paragraphs 15 and 25 of the Seventh Schedule of the lease, in that she has sub-let the flat without making

payment of the requisite fee and that by using the flat for short-term lets has voided the insurance of the premises.

The Application:

2. The landlord, Eveylyn Court (Cheltenham) Limited made an application under S.168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that the respondent, Ms. Richards had breached the covenants in her lease relating to sub-letting and insurance, of her flat. The property is as a three bedroom duplex apartment in a converted building.
3. Numbers in square brackets below refer to the hearing bundle provided by the applicants.

Introduction:

4. The applicants are the freehold owner of the building whose title was registered at HM Land Registry under Title Number GR5163 on 10 May 1976 [53]
5. The respondent is the lessee of the flat. Her leasehold interest was registered at HM Land Registry under Title Number GR239327 on 12 October 2001.[57]
6. The lease is dated 16 May 2001 and was entered into by (1) Evelyn Court (Cheltenham) Limited and (2) Melvyn Allden Lloyd and Emma Clarissa Lloyd for a term of 999 years commencing on 1 January 2011. (“the Lease”) [21]
7. The tribunal issued Directions on 11 March 2016 indicating that the tribunal would determine this matter on the basis of written representations in the four weeks’ from 16 May 2016.
8. In those Directions the parties were required to supply copies of any documents on which they wished to rely, and for the applicants to prepare the bundle for the tribunal’s use. The applicants produced their bundle which contained the documents on which it wished to rely, there having been no compliance with Directions by the respondent, the bundle did not contain a statement of case, or any documents on which she wished to rely.
9. The tribunal considered that there were sufficient papers for this matter to proceed.

The Applicants’ Case:

10. The applicants allege that the following covenants of the Lease have been breached:

Schedule 7 Part I.

Clause 15: *Not to do or permit or suffer any act or omission which may render any increased or extra premium payable for the said insurance of the Development or any part thereof of which may make void or voidable any such insurance or the insurance of premises adjoining the Development and so far as the Lessee is liable hereunder to comply in all respects with the reasonable requirements of the insurers with which the Development or any part thereof may for the time being be insured.*

Clause 25: *Within one month after the date of any and every assignment transfer mortgage charge underlease or tenancy agreement (including any immediate or derivative underlease or tenancy agreement) of the whole of the Demised Premises for any term assignment of such underlease or grant of probate or letters of administration order of court or other matter disposing of or affecting the Demised Premises or devolution of or transfer of title to the same to give or procure to be given to the Lessor notice in writing of such disposition or devolution or transfer of title with full particulars thereof and in the case of an underlease a copy thereof for registration and retention by it **AND** at the same time to produce or cause to be produced to them a certified copy of the document effecting or (as the case may be) evidencing such disposition or other matter **AND** to pay or cause to be paid at the same time to the Lessor a fee of not less than Thirty-Five Pounds (£35.00) in each case together with Value Added Tax thereon in respect of each notice.*

The Inspection:

11. Neither party requested an inspection of the flat. The tribunal did not consider that an inspection would assist in its determination and therefore no inspection was undertaken.

The Law:

12. S.168 of the Act provides –

(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)

(4) *A landlord under a long lease of a dwelling may make an application to a residential property tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*

The Applicants' Case:

13. The applicant's case is that since March 2012 the respondent has been sub-letting her flat in a manner that does not comply with the terms of the lease. In particular the applicant says that at least four of these lettings have been for periods of more than six months, but that there have been an additional unknown number of either short-term lettings, holiday lets, or lets to un-named employees of an un-named company. The applicants say that the respondent has not produced copies of the tenancy agreements as required, or paid the notice fee for each of these sub-lettings. In addition, the applicants say that because the flat has been let for short-term holiday lets, this has voided the insurance policy on the building.
14. At the time of the application the applicants sought notice fees of £21.00 and legal fees of £360.00 together with the reasonable contribution to the landlord's costs in dealing with this matter. It is not clear whether these have been paid because there is correspondence on file from the respondent's representatives attaching a cheque, but the applicants saying this was not received. In any event at the time of the application the matter remained that the applicant had not paid notice or legal fees.
15. In addition, the applicants say that the respondent has been subletting the flat contrary to Part Two Seventh Schedule (1) – in that the flat was being let for holiday lets on various web-sites; and those people who were renting the flat for short-term stays were causing a nuisance to other occupiers of the building.
16. A witness statement by Mr. Michael Smith of Flat 2 [90] relates a history of the short-term letting of the property during 2015, which included a group of individuals who held a party at the property and who caused 'significant nuisance' to other residents. Mr. Smith also stated that he had met the respondent in the garden of the property to discuss the nuisance with a Dr. McGovern, when the respondent offered to screw shut her kitchen window to help reduce the noise egress in the future. Mr. Smith continues in his statement to identify on at least three occasions the letting of the property to groups of people, staying in the property for between 1 and 4 nights, and since November 2015 has observed the same residents in the flat, who he believes are 'corporate clients'.

17. Various photographs have been supplied in evidence. These depict people putting luggage into vehicles, detritus on the stairwell and advertisements of the flat on short-term letting websites.
18. It is clear from this evidence that the property was being advertised and let for short-term lettings during 2015.
19. In addition, the bundle contains an assured shorthold tenancy agreement between the Respondent as landlord and a Mr. Lee Pemberton for a term of 12 months from 1 January 2016. In addition to this there is a cutting from the Gloucestershire Echo dated 15 March 2016 showing Mr. Pemberton and identifying him as the Director of Serviced Letts, a company that appears to specialise in serviced apartments.
20. From the evidence provided to me, including various Tribunal decisions on similar matters, I agree with the Judge in the case of LON/00AK/LBC/0027 (4 Soper Mews, EN3) that the 'occupation' of a flat as a 'private residence' requires the flat to be occupied as a 'home', and that this occupation requires a degree of permanence.
21. Whilst the respondent has now let the flat for a period of 12 months it cannot be said, in my view, that the tenant, Mr. Pemberton can be occupying the property as a home, and is clearly using the property for serviced apartment purposes.
22. In my view the intention of the lease is to restrict the use of the premises to those of a person's residence/home and that cannot be said to be the case in this instance. It matters not that the respondent has paid the applicants additional service charges in relation to the sub-letting as this in my view would only compensate the applicants for the additional administration that they may carry out as a consequence, and possibly additional insurance premiums. In this case the applicants have shown that the insurance on the building does not cover short-term lets of the type entered into by the respondent, and she is therefore in breach of Clause 15 of the lease.
23. The respondent has not responded to this application. She has been given an opportunity to do so. I determine on the evidence before me that the respondent has breached Clause 15 and 25 of Part I of the Seventh Schedule to her lease.

Name: A. Hamilton-Farey

Date: 7 June 2016