FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BG/LBC/2016/0036**
Property	:	**Flat 56 Seacon Tower, 5 Hutchings Street, London E14 8JX**
Applicant	:	**Millenium Seacon Properties Limited**
Representative	:	**Mr P Sissons, Counsel, instructed by Scott Cohen Solicitors**
Respondent	:	**Mr M Hawa**
Representative	:	**.....**
Type of application	:	**Section 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal member(s)	:	**Miss A Seifert FCIArb** **Ms S Coughlin MCIEH**
Date and venue of hearing	:	**13th July 2016 at 10 Alfred Place, London WC1E 7LR**
Date of decision	:	**22nd July 2016**

DECISION

Decisions of the Tribunal

A. The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act'), Mr Hawa has breached the following covenants of the lease dated 24th December 2004 ('the Lease'):

(1) Clause 14.3 in that it has been shown that there has been a subletting or sub lettings or parting with possession of part only of the premises to each of the three occupants.

(2) The First Schedule clause 7 in that it has been shown that Mr Hawa has used or permitted the Flat to be used for a purpose other than of a single private dwelling.

(3) The First Schedule clause 21 in that it has been shown that Mr Hawa has not allowed access to the Lessor and its agents at reasonable times on 48 hours' notice.

B. The Tribunal finds that it has not been shown that there has been a breach of the First Schedule clause 16.

The application

1. The applicant seeks a determination pursuant to section 168(4) of 2002 Act that breaches or covenants or conditions in a lease have occurred.

Background

2. The applicant, Millenium Seacon Properties Limited ('Millenium'), is the freehold owner and current Lessor under the Lease of Flat 56, Seacon Tower Hutchings Street, London E14 8JX ('the Flat') for the term of 999 years from 1st January 2002. The original parties to the Lease were St James Group as Lessor, Seacon Residents Company Limited as Manager, and Darryl James Preston as Lessee.

3. The interest of the Lessor became vested in Millenium on 9th January 2008 as shown on the proprietorship register to the freehold title (Title number EGL429789). The interest of the Lessee became vested in the respondent, Mr Mohamad Hawa, on 12th April 2013 as shown on the proprietorship register for the leasehold title (Title number EGL485729). Copies of the Lease and registered titles were included in the applicant's bundle.

4. The Tribunal inspected Seacon Tower on the morning of 13th July 2016. Seacon Tower is one of two residential blocks on the development with underground parking and gardens. Seacon Tower contains 99 flats. The

flats have a concierge service situated on the ground floor of the building. As Mr Hawa was not at the Flat at the time of the inspection, the Tribunal did not inspect the Flat internally.

5. The Tribunal wrote to Mr Hawa on 26th May 2016 informing him that the Tribunal had received an application under section 168(4) of the 2002 Act, a copy of which was enclosed. On 29th June 2016 the above letter was returned to the Tribunal with 'RTS' in handwriting on the envelope. There was no Post Office return label.

6. The Tribunal has given notice of the application to the mortgagees of the Flat shown on the title.

7. Directions were issued by the Tribunal dated 3rd June 2016. The Directions referred to the application and included the place, date and time of the hearing. The Directions were sent by the tribunal to each of parties by post under cover of letters from the Tribunal dated 6th June 2016. The letter to Mr Hawa was addressed to him at the Flat. This letter has not been returned to the Tribunal.

8. Also, the Tribunal wrote to each of the parties on 28th June 2016 confirming the date and time of the hearing and stating that the Tribunal would like to carry out an inspection on the morning of the hearing day. The letters were sent by post. The letter to Mr Hawa was addressed to him at the Flat. This letter was not returned to the Tribunal.

9. Under rule 34 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013,

If a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal –

(a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and

(b) considers that it is in the interest of justice to proceed with the hearing.

10. There was no attendance by Mr Hawa for the hearing. Mr Sissons on behalf of Millenium submitted that the only address provided by Mr Hawa was that of the Flat. The applicant had taken all reasonable steps to identify whether Mr Hawa had an alternative address. The Flat was the address for Mr Hawa stated on the registered title to the leasehold interest. Enquiries had been made as outlined in the witness statements contained in the applicant's bundle, to ascertain any

alternative address, but none was found. Mr Hawa had provided no alternative address to the applicant, the agents or concierge.

11. Mr Borsitzky is employed as the Building Manager for Seacon Towers by the managing agents Hallmark Property Management Limited. He explained in his oral evidence that the letter boxes for each of the Flats was in the entrance hall of Seacon Tower and were suitable for A4 size letters. He had personal control over the return arrangements for letters and stated that this involved the application of Post Office labels stating the reasons for return. The letter containing the copy of the application had not been returned by the applicant and the writing on the letter 'RTS' was not that of Mr Borsitzky.

12. The Tribunal took into account that the address of the Flat was the only address for Mr Hawa. The applicant had taken steps to find out whether there was an alternative address. The letters from the Tribunal dated 6th June and 28th June referring to the hearing time date and location were not returned undelivered to the Tribunal. The letter dated 3rd June did not have a post office return post label. Having considered the matter the Tribunal determined that the hearing should proceed in the absence of Mr Hawa. The Tribunal was satisfied under rule 43(a) that Mr Hawa had been notified of the hearing or that reasonable steps had been taken to notify Mr Hawa of the hearing. The Tribunal also determined under rule 43(b) that it was in the interests of justice to proceed with the hearing.

The hearing

13. The applicant was represented by Mr Sissons of Counsel. There was no attendance by or on behalf of Mr Hawa.

14. Mr R Simmons attended the hearing. Mr Simmons is employed by Avon Estates Limited, agents for Millenium. Mr P Borsitzky also attended the hearing. Mr Simmons and Mr Borsitzky confirmed the contents of their witness statements, each dated 30th June 2016 and gave additional oral evidence. A witness statement was also provided by Mr Ari Mendonca, the Concierge employed by Hallmark Property Management Limited.

Findings and conclusions

15. The application was made under section 168(4) of the 2002 Act. Under section 168(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 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the leave unless subsection (2) is satisfied. Amongst the ways in which subsection (2) can be satisfied is that: it has been finally determined on an application under subsection (4) that the

breach has occurred. Subsection (4) states: *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.*

16. The applicant alleged that Mr Hawa had breached the following covenants in the Lease.

(a) Clause 14.3 Not to assign underlet or part with possession of part only of the premises

(b) Clause 14.4 to give to the Lessor and the Manager notice of every dealing with or underletting within twenty one days after the same shall occur and to pay to each of the Lessor and the Manager a registration fee in respect of such notice

(c) First Schedule Clause 7 – the covenant not to use the premises or permit them to be used for any purpose save that of a single private dwelling

(d) First Schedule Clause 16 – the covenant to not cut maim or injure any of the main structure or the principal walls floors ceilings timber work iron or stucco work of or on the Premises nor to alter amend or add to the internal layout and design of the premises or any part thereof without prior consent from the Lessor and the Manager

(e) First Schedule Clause 21 – The covenant to allow access to the Lessor and its agents at reasonable times on 48 hours' notice

17. It was alleged that Mr Hawa had breached the obligation under the First Schedule clause 16.

Not to cut maim alter or injure any of Main Structures the Building or the principal walls floors ceilings timbers iron or stucco work of or on the Premises nor to alter amend or add to the internal layout and design of the Premises or any part thereof without the prior consent of the Lessor and Manager (such consent not to be unreasonably withheld) and then only upon payment of their proper fees and expenses so incurred including those of their professional and other advisers.

18. In the application it was alleged that Mr Hawa had installed a stud wall at the property to separate the living room from the kitchen for the purposes of utilising the living room as an extra bedroom and that this had changed the use of the living area and altered and amended the internal layout and design of the premises without consent.

19. Mr Borsitzky's evidence in respect of this alleged breach was that the building Seacon Tower was subjected to an annual boiler check for maintenance. In his statement he said that *While during the checks, the maintenance companies noted that various flats within the building*

had alterations which involved the addition of stud walls to create extra rooms and we have become aware of an issue affecting the building where the leaseholders have been letting individual rooms within the flats via companies who specialise in room lettings. I believe the company who operates the letting of the rooms in this flat is the London Corporate Lettings (also referred as London Corporate Apartments) as this is the name given for the agency on our resident sheets.

20. Mr Simmons in his evidence stated that there had been letters in early 2016 which stated that companies such as London Corporate were letting out rooms. He said that he assumed that these letters were written after the boiler inspection. When asked whether any reports of noise of works at the Flat had been received, he said that he had not received any complaints regarding any such noise. In his witness statement Mr Simmons said, *We have been informed by SRCL that they have encountered problems at the block in relation to companies letting out rooms in apartments and alterations of Flats to facilitate same. A list of flats in which inspections had revealed alterations.... were provided to the applicant's Solicitor and Flat 56.... was included upon that list.*

21. The above evidence of Mr Borsitzky was in respect of observations during checks by maintenance companies of flats in Seacon Towers. However there was no specific evidence in respect of Flat 56. Mr Simmons referred to a list of flats in which inspections had revealed alterations, but no such list or evidence from the persons who inspected the flats or records of what they had observed was before the Tribunal. Mr Borsitzky said in his oral evidence that that there were annual boiler inspections of each of the flats in February or March each year by an external contractor who was accompanied by the company's maintenance engineer. However the maintenance engineer who visited the Flat had resigned and left the company. There was no evidence from the person alleged to have seen an alteration at the Flat. In his statement Mr Borsitzky said that he had spoken to one of the alleged occupants, a Mr Shah, who had told him that the living room had been converted into two bedrooms. However in the application it was alleged that Mr Hawa had installed a stud wall at the property to separate the living room from the kitchen for the purposes of utilising the living room as an extra bedroom, not that the living room had been converted into 2 two bedrooms.

22. Mr Sissons said that the burden of proof of breaches of covenant by the Mr Hawa lies on the applicant and that the standard of proof is on the balance of probabilities. Having considered the evidence the Tribunal finds that it has not been shown to the required standard that there has been a breach of the First Schedule clause 16 as alleged.

23. It was alleged that there had been a breach of clause 14.3 of the Lease, not to assign, underlet or part with possession of part only of the Flat.

24. Mr Sissons explained that, in the alternative, if there had been an under letting of the whole Flat, this would constitute a breach of clause 14.4 of the lease, as there was a failure to comply with the provisions as to notice and/or registration fee.

25. Further it was alleged that Mr Hawa was in breach of the First Schedule clause 7, which provides that *No part of the Premises shall be used or be permitted to be used for any purpose save that of a single private dwelling house.*

26. The factual evidence relied on to support the allegations as to subletting / failure to give notice / register, and use of the Flat otherwise than as a single private dwelling house, can be summarised as follows.

27. In the application it was alleged that the Flat was underlet in part and occupied by three tenants of separate households who have individual rooms. It was alleged that Mr Hawa had permitted the Flat to be used other than as a single dwelling.

28. In his evidence Mr Borsitzky said that he works Mondays to Thursdays on site at the Seacon Towers from 6 am to 6 pm. There is also a concierge who works within Seacon Towers in the evenings between 6pm to 6 am and a concierge who works on weekends.

29. He stated that as part of his duties he oversees the entry of persons to Seacon Towers, co-ordinates on site services and is involved in receipt of packages and deliveries to this and the Naxos building, which is also located on the development. He considered that he has a good knowledge of the occupants of Seacon Towers by sight as persons enter and leave on a daily basis. Residents are asked to complete contact detail forms. He said that he believed that there are at least three persons presently occupying the Flat. There are resident details for two of the occupants, Mr James Dine and Naif AlSoleh who moved in September 2015. A copy of the form for Mr Dine and Mr Naif AlSoleh was at 'PB 1'. This showed the letting agents as London Corporate Apartments. He said that he believes that a Mr Shah, having moved in at a different time, also occupies the apartment and has been receiving packages there. In his oral evidence Mr Borsitzky said that he had been told by Mr AlSoleh and Mr Shah that they had individual agreements with London Corporate Apartments in respect of occupation in the Flat. He had not spoken to Mr Dine.

30. In his statement Mr Borsitzky mentioned that Mr Hawa had visited Seacon Towers recently. However, in his oral evidence he said that he was not totally sure that this was Mr Hawa, as previously he had only met him on one occasion, and that was a long time ago.

31. The concierge, Mr Mendonca, stated in his witness statement that he believed that the Flat was being let room by room and that there are at least three men presently living in the Flat who he sees regularly. He said that he does not know their names.

32. In respect of the alleged breach of the covenant to allow access (the First Schedule clause 21), Mr Simmons said that Millenium had instructed Solicitors to write to Mr Hawa in respect of the alleged breaches and request access for inspection of the Flat. No response was received and subsequently another letter was written requesting access on an alternative date. Again no response was received. Copies of the correspondence were produced at 'RS2'. Mr Simmons said that he attended Seacon Towers on 14th April 2016 as requested and was unable to gain access to the Flat.

33. Mr Simmons confirmed that the only address known for Mr Hawa was that of the Flat. Millenium's solicitors had made enquiries of the managing agents, Hallmark, to see if additional details were held, but they confirmed that the Flat was the sole contact address held and they did not hold a telephone number for Mr Hawa. A copy of this confirmation was at 'RS3'. Mr Simmons said that he had also been provided with a copy of an email sent from Millenium's solicitors to an email address found for London Corporate Apartments, the letting agency named on the residents details form, requesting an address or contact details. 'RS4'. No response was received. A copy of the web page for that company was also included at 'RS5'.

34. Having considered the evidence as a whole, the Tribunal is satisfied that it has been shown to the required standard that Mr Hawa has breached the following covenants:

(1) Clause 14.3 in that it has been shown on the balance probabilities that there has been a subletting or sub lettings or parting with possession of part only of the premises to each of the three occupants.

(2) The First Schedule clause 7 in that it has been shown to the required standard that Mr Hawa has used or permitted the Flat to be used for a purpose other than of a single private dwelling.

(3) The First Schedule clause 21 in that it has been shown to the required standard that Mr Hawa has not allowed access to the Lessor and its agents at reasonable times on 48 hours notice.

If, contrary to (1) above there has been a subletting of the Flat as a whole, the Tribunal would have found that there has been a breach of the registration / notice requirements of clause 14.4.

Name: Judge A Seifert **Date:** 22nd July 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).