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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BH/LBC/2016/0030**
Property	:	**Ground Floor Flat, 276A High Road Leytonstone, London E11 3HS**
Applicant	:	**Arora Estates Ltd (freeholder)**
Representative	:	**Mr Ajay Arora (in-house solicitor)**
Respondent	:	**Ms Rajinder Kaur Gill (leaseholder)**
Representative	:	**In person**
Type of application	:	**Determination of a breach of covenant**
Tribunal	:	**Judge Timothy Powell & Mrs Lucy West**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**28 July 2016**

DECISION

The tribunal's decision

1. The respondent leaseholder, Ms Rajinder Kaur Gill, is in breach of the covenants contained in clauses 2(7), 2(11) and 2(23) of her lease.

Reasons for the tribunal's decision

The application

2. The flat which is the subject of this application is the Ground Floor Flat, 276A High Road Leytonstone, London E11 3HS ("the Flat"). The Flat

forms part of the building known as 276 High Road Leytonstone ("the Building"), which comprises two flats adjacent to and above one commercial unit, with which there is no communal part.

3. The Flat is held subject to a lease dated 18 December 2006 between (1) Benz Properties Ltd and (2) Hitesh Patel and Shinal Patel, as rectified by a deed of rectification dated 28 November 2007, made between the same parties. As part of the demise of the Flat, to the rear, formed part of the neighbouring freehold title, to 278 High Road Leytonstone, a supplemental lease was completed between (1) Arshad Mamood (the then freeholder of no.278) and (2) Hitesh Patel and Shinal Patel, also on 28 November 2007. The 2006 lease and the 2007 deed and supplemental lease are collectively referred to as "the Lease".

4. The applicant freeholder now owns both freehold titles to 276 and 278 High Road Leytonstone.

5. The applicant freeholder applied to the tribunal in an application dated 28 April 2016 under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), for a determination that a breach of covenant or condition in the Lease had occurred. The wording of section 168 is set out as an appendix to this decision. The applicant provided official copies of the registers of title to numbers 276 and 278, in order to establish ownership.

6. Directions were issued by the tribunal on 13 May 2016.

The hearing

7. The hearing was held on 20 July 2016. For the applicant company, Mr Ajay Arora, in-house solicitor, attended, together with Mrs S Menon, property manager of Synergy Home Management Ltd, and Ms Z Ashraf, a paralegal. Mr Arora confirmed the contents of the statement of case that had been filed on behalf of the applicant, made reference to the applicant's bundle of documents, gave additional oral evidence and made submissions.

8. The respondent, Ms Rajinder Kaur Gill, also attended the hearing, together with an observer, Ms S Birring, in support. The attendance of Ms Gill was the first engagement that she had made with the tribunal, following the receipt of the application. Having heard the evidence and submissions by Mr Arora, Ms Gill asked questions and then proceeded to give an oral explanation of her situation, albeit that she had not previously submitted any statement of case or documents to the applicant or to the tribunal.

9. The tribunal did not consider that an inspection of the Flat or the Building was required to determine the issues.

The issues

10. The relevant issues for determination were:

    (i) Whether the Lease included the covenants relied upon by the applicant;

    (ii) Whether the matters alleged by the applicant had in fact occurred; and

    (iii) Whether the respondent had failed to comply with the provisions of clauses 2(7), 2(11) and 2(23) of the Lease.

The evidence

11. The tribunal dealt with the alleged breaches in the order that they were set out in the application.

12. Clause 2(11) of the Lease is the lessee's covenant with the lessor:

> "Not to sublet any part or the whole of the Flat without the prior written consent of the Lessor, such consent not to be unreasonably withheld and to pay to the Lessor the Lessor's reasonable charges for supplying such consent".

13. Clause 2(23) is the lessee's further covenant:

> "Not to assign or underlet the premises without first obtaining the execution by the Assignee or Underlessee of a Deed of Covenant with the Lessor to observe and perform the covenants contained in this lease and to pay the Lessor's reasonable costs for preparing and registering such Deed of Covenant."

14. Finally, by clause 2(7) the lessee covenants:

> "To permit the Lessor and its surveyors or agents with or without workmen or others at all reasonable times during the said term to enter into and upon the Flat or any part thereof to view the condition thereof and also effectually and substantially to make good and restore all breaches of covenant which shall be discovered on any such examination and of which notice in writing shall be given by the Lessor to the Lessee within one calendar month after giving of such notice."

15. The tribunal was satisfied the Lease contained the covenants relied upon by the applicant.

16. The breaches of the above clauses alleged by the applicant are summarised as follows.

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15. The tribunal was satisfied the Lease contained the covenants relied upon by the applicant.

16. The breaches of the above clauses alleged by the applicant are summarised as follows.

17. On 26 March 2015, Ms Gill purchased the Flat at auction. Her solicitors were in contact with Synergy Home Management Ltd, who acted as the managing agent for the freeholder. Some time after the purchase, those solicitors provided the lessor with a deed of covenant signed by Ms Gill, in which she covenanted directly "with the Lessor to observe and perform all the covenants on the parts of the Lessee referred to in the Lease throughout the remainder of the Term (including any covenant under which this Deed of Covenant is required)."

18. Ms Gill was in contact with Synergy Home Management herself, about problems with connecting an electricity supply to the Flat. She was very concerned at the delay, because it was her intention to sublet the Flat as quickly as possible. By e-mail dated 9 June 2015, Mrs Menon at Synergy wrote to Ms Gill in the following terms:

> "Dear Madam
>
> Could you please provide an update on the electricity supply to your flat and confirm whether you intend to sublet your flat?
>
> We wish to remind you that in accordance with clause 2(11) of your lease you require our prior written consent for subletting. If you wish to sublet you must make an application for consent to us and we can advise you of the formalities and fees required at that time.
>
> Additionally we note clause 2(23) of your lease requires you to enter into a deed of covenant on assignment or underletting. We do not seem to have received a deed of covenant in respect of the assignment of the lease to you ..."

19. By e-mail dated 19 June 2015, Ms Gill stated unequivocally:

> "I can confirm that I do intend to let the property."

20. This resulted in an immediate response on the same day from Mrs Menon:

> "... We look forward to receiving an application for prior consent to sublet together with copies of proposed tenancy agreement, contact details of tenants, positive references for them and a payment of £250+VAT in due course. Cheque should be made payable to Synergy Home Management Limited. Consent is usually granted in the form of a licence valid for one year from the start date of the tenancy. ..."

21. Ms Gill provided a copy of a blank tenancy agreement that she planned to use and a reference for her tenant, but she did not make formal application for consent to sublet; nor did she pay the £250 plus VAT charge for such consent.

22. In evidence, Ms Gill said that she felt the £250 charge was too much and, instead, she had sent a cheque for £150 plus VAT to the managing agent.

However, Mrs Menon denied receiving this; and Ms Gill was unable to prove either that it had been sent, or that the cheque had been cashed. Accordingly, the tribunal is not satisfied that even the £150 plus VAT had been sent by Ms Gill to the managing agents. Notwithstanding this, Ms Gill accepted that the letting of the Flat had gone ahead, to a tenant who had been sourced for her by the neighbouring Brent Council; and she said that her sub-tenant was paying rent of some £1,060 per calendar month.

23. The fact of the letting came to the freeholder's attention when Ms Gill put the Flat up for sale by auction in February 2016; and the particulars stated that "The property is subject to an assured shorthold tenancy at a rent of £1,148 per calendar month." As a result of this, the freeholder's in-house solicitor, Mr Ajay Arora, wrote a letter to Ms Gill at her home address in Ilford, on 10 February 2016. This letter referred once again to the requirements of clause 2(11) and 2(23) of the lease, pointing out that Ms Gill was in breach of them, having neither applied for consent to underlet, nor obtained a deed of covenant from her subtenant. The letter went on to state:

> "13. Please remedy the breaches listed above by either (i) ceasing to sublet the property and providing facilities for inspection to confirm that has occurred or (ii) (a) applying for retrospective consent to underlet (notwithstanding that the landlord is not obliged to give such consent retrospectively) together with the requisite documents and fees and (b) obtaining the execution by the underlessee of a Deed of Covenant with the Lessor and pay their costs as required by the lease.
>
> 14. We understand a Deed of Covenant has been received in respect of the assignment to you together with a cheque for £140 which is yet to be banked. This Deed should not be confused with the Deed of Covenant required in Para 13 above in respect of the underletting."

24. Although Ms Gill confirmed that she had received this letter, she took no action to remedy the apparent breaches, neither seeking retrospective consent to underlet, nor arranging for her subtenant to execute a deed of covenant directly with the lessor. Ms Gill said that she had been overwhelmed by documentation from the freeholder, pertaining to other litigation involving the previous lessees of the two flats in the building, about a dispute as to unpaid advance service charges for major works.

25. Mr Arora's letter of 10 February 2016 went on to state:

> "**Access to inspect**
>
> 15. Clause 2(7) of the Lease requires you to permit the Lessor and its surveyors or agents at all reasonable times during this said term to enter into and upon the Flat or any part thereof to view the condition thereof.

16. Our client requires, pursuant to the above of the clause of the Lease, access to your property to view the condition. Please contact Synergy Home Management Limited directly to arrange a mutually convenient date and time for the inspection."

26. Ms Gill said that she had not contacted Synergy Home Management to arrange a mutually convenient time for an inspection. She said that, had the freeholder contacted her, she would have had no problem in giving access; Synergy could have written to her and asked for an inspection but they did not do so; and she had never said that she would not give access.

Findings and conclusions

27. Having considered the evidence as a whole we are satisfied that it has been demonstrated that the Flat was underlet in about June or July 2015 and continues to be underlet today.

28. We find that there has been a breach of clauses 2(11) and 2(23) of the Lease. Ms Gill has not complied with these covenants because she has not applied for consent to underlet, nor has she procured the execution of a deed of covenant by her underlessee.

29. We are also satisfied that a proper and reasonable request to inspect the property was made on 10 February 2016. Although Ms Gill received that letter, she took no steps to comply with the request. Although, perhaps, it would have been helpful had Synergy specified an exact date for there to be an inspection, we are not convinced that this would have made any difference, particularly since Ms Gill has not engaged with the freeholder in any way since June 2015, nor with the tribunal in these proceedings, until her unexpected appearance at the hearing of 20 July 2016.

30. We are therefore satisfied that Ms Gill's failure to response to the request made by Mr Arora on the 10 February 2016 amounts to refusing access, thereby putting Ms Gill in breach of clause 2(7) of the Lease.

The tribunal's decision

31. Accordingly, as indicated at the beginning of this decision, the tribunal finds that there have been breaches of clauses 2(7), 2(11) and 2(23) of the Lease.

Concluding remarks

32. Many of the problems in this case result from the fact that Ms Gill has not engaged with the freeholder concerning the management of the Building or compliance with the covenants in her Lease. All of the steps that she needs to take to rectify the position are set out in Mr Arora's

letter of 10 February 2016. Ms Gill helpfully said that she would like everything to be resolved amicably; and that all the managing agents have to do is to call her and she is willing to discuss all of these issues.

33. At our request, the parties confirmed that they would take the opportunity of their attendance at the hearing to discuss their future engagement, outside, after the hearing had concluded. It is therefore to be hoped that these matters can be resolved swiftly and without further litigation.

Name: Timothy Powell **Date:** 28 July 2016

Appendix

Section 168 of the Commonhold and Leasehold Reform Act 2002

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 the appropriate 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.

(6) For the purposes of subsection (4), "appropriate tribunal" means—

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) in relation to a dwelling in Wales, a leasehold valuation tribunal.