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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00CA/LBC/2015/0021**
Property	:	**Flat D, 12 Park Avenue, Southport, PR9 9LS**
Applicant	:	**Park Avenue (Southport) Management Co. Ltd**
Representatives	:	**Brown Turner Ross**
Respondent	:	**Mr Stephen James Turner**
Type of Application	:	**Commonhold and Leasehold Reford Act 2002 168(4)**
Tribunal Members		**:Mr Phillip Barber; Ms Jenny Jacobs MRCS**
Date of Decision	:	**26 January 2016**

DECISION

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1. By an application to the Tribunal, the Applicant has applied under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for an order of the Tribunal that a breach of the lease has occurred.

2. The Respondent holds a long lease of the property purchased on 31 May 2013 for £85,000 and the Applicants are the landlords. The lease which is dated 20 August 1976 is contained within the bundle and is for a term of 999 years.

3. Section 168 provides as follows:

> (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,
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> (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.

4. The Application for a determination has been brought on the basis that the Applicant claims that the Respondent has breached a number of terms of the lease as set out in paragraph 5.1 through to paragraph 5.7 of the application.

5. The decision of the Tribunal and our reasons for so deciding in relation to each of these alleged breaches is set out as follows.

<u>1. The Transfer was not made with the consent of the Applicant</u>

6. Clause 2(12)(b) of the lease requires the lessee not to assign, underlet or part with possession of the whole of the premises without the prior written consent of the lessor, such consent not to be unreasonably withheld.

7. The complaint here is that the deed of assignment by which the Respondent obtained the lease of the flat from the former lessee was made without the

consent of the Applicant under the terms of the lease. That point is admitted by the Respondent in his witness statement at paragraph 7 and accordingly it would follow that, notwithstanding the failure to obtain consent was an act by the former lessee from whom the Respondent purchased the remaining interest in the lease, it amounts to a breach of covenant.

2. The premises have been sublet in breach of clause 2(12)(b)

8. The complaint here is that Mr Turner has let the flat to a tenant under an assured shorthold tenancy agreement. That tenancy, as we understand it, has now ended and the flat is currently unoccupied, however it was previously let and consent, although requested was not forthcoming.

9. Again this is alleged to be a breach of clause 2(12)(b) of the lease.

10. Despite the fact that consent was requested and no response was received, the subletting of the flat in the absence of consent in accordance with clause 2(12)(b) amounts to a breach of covenant.

3. No notice of transfer in breach of clause 2(13) of the Lease

11. The complaint here relates again to the issues addressed in complaint 1 above.

12. In the letter from Sewell Mullings Logie dated 03 December 2015 it is stated that they note from their "predecessor's file that they have sent Notice of Assignment and the notice fee of £5." This seems to us to comply with clause 2(13) of the lease.

13. Accordingly, and on a balance of probabilities there has been no breach of clause 2(13) of the Lease.

4. No notice of the subletting mentioned above and the subletting is in breach of the additional regulations made on the 26 September 2010

14. This again relates to the subletting by Mr Turner to a tenant under an assured shorthold tenancy. The application does not refer specifically to which clause in the Lease as originally enacted Mr Turner is alleged to have breached but we assume it to be clause 2(13).

15. As mentioned above we are satisfied that Mr Turner provided the Applicant with sufficient details of the terms of the tenancy and the agreement to comply in substance with the requirements of clause 2(13) in that he sent details to the Applicant and requested consent.

16. However, it remains the case that the £5 fee was not paid and accordingly this amounts to a breach of the terms of the lease.

17. The additional regulations of 26 September 2010 seems to be a document entitled "Revised supplemental to the Head lease" which appears at pages 66 to 67 of the documents.

18. It is difficult to understand what this document purports to be but it appears to be a collection of bits of amendments made at various AGMs. There is no evidence that any of these amendments have been made by reference to any procedure required by company law and we are wholly unsatisfied that they represent *bone fide* additions of the type envisaged by regulation 14 of schedule 1 to the Lease.

19. It follows that we are unable to find any breach of covenant arising out of any purported amendments under regulation 14 of schedule 1 to the Lease.

5. The installation of a new central heating boiler

20. This is an allegation that Mr Turner has breached regulation 9 of the First Schedule to the Lease which provides that the lessee should not "alter add to or damage the heating apparatus installed in the demised premises".

21. Based on the evidence we find as fact that Mr Turner's old central heating boiler broke down over Christmas and he employed a Corgi registered gas fitter to replace the boiler with a new like for like boiler.

22. The replacement of an old broken boiler by a new modern boiler amounts to an alteration within the terms of the lease and accordingly there is a breach of covenant.

6. Affixing a satellite receiver in breach of regulation 11

23. It is apparent that Mr Turner fixed a satellite receiver to the exterior of the block shortly after he moved in. He states, and we accept, that he did so as there were a number of other satellite receivers on the wall. Shortly after his dish was installed he was asked to remove it, which he did as did all the other residents with satellite dishes.

24. The application refers to regulation 11 but in fact this relates to noise nuisance from children so it hardly seems relevant. Regulation 10 relates to fixing a radio or TV aerial to the exterior of the demised premises but as Mr Turner points out, a satellite dish is neither of these.

25. We do not find that there has been a breach of the Lease. We do not accept that Mr Turner has breached neither the regulation referred to in the

application (noise nuisance by children) nor the regulation which the Applicant is probably referring to (affixing a radio or TV aerial).

7. Permitting visitors and tradesmen to park at the premises

26. This relates to what appears to be additional regulations made under regulation 15 of the lease and as mentioned above which appear in a document at pages 66 and 67 of the Applicant's bundle. The Tribunal considered the status of this document in relation to the allegation about subletting discussed above, and reference is made to those paragraphs.

27. All that appears in this document in relation to the issue of parking is the phrase "Visitors cars and tradesmens vehicles park outside [sic]" which to us is meaningless.

28. The Applicant has included photographs of various cars and vans parked in the car park of the block and in fairness to Mr Turner, he accepts that some of these relate to his guests and visitors.

29. There is nothing in the Lease which the Applicant can point to as being breached by Mr Turner and as mentioned above the purported additional regulations to the lease are meaningless.

30. Accordingly, there is nothing that Mr Turner could be said to have breached in relation to this allegation.

Signed Phillip Barber

Dated 04 March 2016

Phillip Barber, Judge of the First-tier Tribunal