



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

Case Reference : **MAN/OOBY/LBC/2018/0025**

Property : **Apartment 1, 5 Temple Lane, Liverpool L2 5BA**

Applicant : **Avon Freeholds Limited**

Respondent : **Edward Reed**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Section 168(4)**

Tribunal Members : **Laurence Bennett (Deputy Regional Judge)
Niall Walsh (Deputy Regional Valuer)**

Date of determination : **22 March 2019**

Date of Decision : **15 April 2019**

DECISION

Summary decision

1. The Respondent has breached covenants in his lease relating to underletting and permitted use of Apartment 1, 5 Temple Lane, Liverpool L2 5BA.

Application

2. Avon Freeholds Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Mr Edward Reed has breached Lessee's covenants within the lease of Apartment 1, 5 Temple Lane, Liverpool L2 5BA (the Property).

Background

3. The Applicant is the proprietor of the freehold and successors to the Lessor's interest created by the lease of the Property. The Respondent is the Leaseholder.
4. The application was made on 6 November 2018.
5. Directions were made 28 December 2018 by Deputy Regional Judge Bennett. They included "The Tribunal considers it appropriate for the matter to be determined by way of a paper determination....." The directions gave opportunity for the parties to request a hearing. Neither party made a request.
6. The Applicant's submissions in compliance with directions include copies of the Freehold and Leasehold Land Registers, copy relevant lease, a statement of case with submissions and authorities referred to and a witness statement of Mr Yaron Hazan, an employee of the Managing Agents appointed by the Applicant and the Property Manager of the building in which the apartment is located.
7. The Respondent's submissions in compliance with directions include a statement of case and witness statements of Mr Reed and his daughter Ms Sara Kearns-Reed and Manager of the Property on behalf of her father.
8. The Tribunal convened on 22 March 2019 without the parties to determine the application.

The Lease

9. The Lease dated 10 February 2006 is made between Villagate Commercial Limited (1) Edward Reed (2) (the Lease).
10. The Lease contains Lessee's covenants in respect of underletting, user and observance of regulations either direct or permitted or knowingly suffered them to be done by a third party.
11. The specific covenants referred to within the application are contained in Part 4, paragraph 9.7, Part 5, paragraphs 20, 22.1 and 22.2, paragraph 2.4 and paragraph 9.9.

Grounds

12. The grounds of the application are that “The Property has been let for short term rentals and the Respondent has entered into an agreement with a third party for a stated duration of 6 months for that party to arrange further lettings of the property. No notice of that agreement nor of the further lettings was provided to the Landlord within 28 days or at all and no consent provided by the Applicant to the same. By reason of the short lets the Property is not being used as a single private residence. The associated use of short term lettings, which includes high volume access and short term visitors with use of the premises associated with recreational use results in activities from which nuisance, annoyance, inconvenience and damage may arise. A box has been erected upon the communal area wall causing damage to the wall for the purpose of storage and access by third parties for keys to the property which is a safety risk.”

Law

13. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states: "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."
14. Section 168(2)(a) states: "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
15. Section 168(4)(a) states: "A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred."

Evidence and submissions

16. The Applicant’s evidence and submissions are detailed above.
17. The Applicant’s statement of case refers to the lease obligations and reviews the Respondent’s acceptance that no notice of an agreement was given to the Applicant, that a key box was affixed to the wall and an implied acceptance that short lets occurred by way of acknowledgement that they have ceased.
18. The Applicant acknowledges the Respondent’s statements denying direct breach say inadvertently and that they were remedied as soon as practicable. The Applicant provides submissions about the assertions made by the Respondent and observations about the evidence.
19. Mr Hazan set out information he received as a result of contact by a proposed occupier of the property which led him to find advertisements for the property on short stay hotel websites. Details are given about resulting correspondence with the Respondent and the import of the information provided to him.
20. The Respondent denies knowingly breaching the covenants in the lease and accepts that any underletting should be by way of an Assured Shorthold Tenancy for a period of not less than 6 months.

21. The Respondent refers to an agreement with a Manager under which it was given authority to let the property. The Respondent denies knowledge of how the Manager used the property in particular for short term letting. This was not apparent on inspection. The Respondent denies causing nuisance and states that the key box was affixed without the Respondent's knowledge.
22. The Respondent states that the agreement with the Manager has since been terminated and the Property is now occupied under Assured Tenancies for which notice has been given.
23. The Respondent's statement refers to matters other than the subject of the application and submits that these proceedings are disproportionate in the light that steps have since been taken.
24. The Respondent's witness statements support the submissions with the case statement.

Tribunal's conclusions with reasons

Our conclusions are:

25. The evidence that the Property has been used for short term lets is overwhelming. The exhibits to Mr Hazan's statement provide persuasive illustration and the Respondent does not deny short term lets occurred.
26. The Respondent states that the short term lets occurred without his permission or knowledge and have since ceased.
27. The lease covenants referred to are clear and we find that the Respondent has been in breach by underletting the Property other than by Assured Tenancies for a term of not less than 6 months. Further provisions for consent to underletting and covenants by the subtenant are also breached. For the same reasons the user covenants have not been observed in that the Property has been used other than as a private residence.
28. The Applicant seeks a determination that there have been breaches of covenants relating to nuisance and observance of regulations. Whilst it may be considered inevitable that occupation by way of short term lettings will give rise to nuisance there is no direct evidence provided and we are not able to reach a conclusion.
29. The Respondent considers the application disproportionate and refers to the history of the relationship between the Freeholder and Leaseholder. We are not able to take these matters into account as they are not relevant to a determination in accordance with the statutory provisions. The Respondent's actions following acceptance of breach may be a matter that will be taken into account in any action following our determination that a breach of covenant has occurred.

Order

30. The Respondent has breached the following covenants within the Lease of the Property; 9.1.d, 9.7, 9.9, 22.1.

L J Bennett
Tribunal Judge
22 March 2019