FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**CHI/21UD/LBC/2019/0054**
Property	**:**	**Flat C, 146 London Road St Leonards on Sea TN37 6ND**
Applicant	**:**	**38 Randolph Avenue Ltd (Landlord)**
Representative	**:**	**Canfields Law**
Respondent	**:**	**Mr D A Broome (Tenant Flat C)**
Representative	**:**	**Not represented**
Type of Application	**:**	**Breach of covenant**
Tribunal Members	**:**	**Judge F J Silverman MA LLM Mr K Ridgeway MRICS**
Date of paper consideration	**:**	**30 April 2020**
Date of Decision	**:**	**30 April 2020**

DECISION

Decision of the Tribunal

1. **The Tribunal is not satisfied that sufficient evidence has been provided to show that the Respondent has been properly served with the Application and accompanying documentation nor that sufficient evidence has been supplied to sustain the Applicant's assertions that breaches of covenant have been committed by the Respondent.**
2. **The Applicant's request for a declaration under s168 Commonhold and Leasehold Reform Act 2002 is refused.**
3. **The Applicant's request for an order for costs is also refused.**

Reasons

1 The Applicant landlord sought a determination from the Tribunal that the Respondent tenant had committed and remained in breach of covenants of his lease dated 8 May 1990 made between Latif Noordin Ismail Kara (1) and the Respondent (2) which relates to a self-contained flat (Flat C)(the property) in the building known as 146 St Leonards Road, St Leonards on Sea, Hastings East Sussex TN37 6ND (the building). The Application was filed on 12 December 2019. Directions were issued by the Tribunal on 09 January 2020.

2 The matter was listed for inspection followed by a paper consideration on 30 March 2020 but was postponed on account of an extension of time granted by the Tribunal following a request from the Applicant's solicitor who was self-isolating under precautions imposed in respect of Covid-19 and who was therefore unable to comply timeously to a request made by the Tribunal for full compliance with the Tribunal's Directions.

3 Page references below refer to pages in the Applicant's hearing bundle. References to the supplementary bundle are noted accordingly. The Respondent did not file a bundle nor did he file any witness statements in support of his case.

4 Restrictions imposed by the Covid-19 pandemic prevented the Tribunal from making a physical inspection of the property (Pilot Practice Direction PD). Google Maps shows 146 St Leonards Road to be a mid-terraced house with a rear extension close to shops, and within a short walking distance both of the railway station and sea front. The freehold official title entries (page E7) indicate that the building comprises at least two storeys and is divided into at least 4 flats, Flat C, the property, being situated on the second floor of the building. Mr Austin's statement (page E2) describes the building as comprising 4 flats. Although the Directions (page B3) required the Applicant to include photographs in the hearing bundle none were

provided. A subsequent request issued by the Tribunal for compliance with this Direction was not complied with.

5 On 13 March the Tribunal asked to Applicant to provide evidence of compliance with Directions 7 (proof of service) and 12 (correspondence, photographs and legal submissions). The Applicant asserts that the property has been abandoned by the Respondent (page E3) and that an order for its sale has been obtained by Holdens, a firm of solicitors in Hastings, who also have a charge over the property. However no evidence has been provided to show that to be the case. There is no substantive evidence that any proper enquiries have been pursued to trace the Respondent and no evidence of service of the bundle on the Respondent. Without further evidence the Tribunal cannot conclude that the property has been abandoned. On page supp.2 the Applicant's solicitor states that the application and accompanying documents were served on the Respondent by letters dated 31 January 2020 and 2 March 2020 sent by first class post. Copies of cover letters addressed to the Respondent at the property (page supp. 6 and 7) are attached but there is no certificate of posting. No evidence has been supplied of service on the Respondent of the supplementary bundle. The Tribunal is therefore not satisfied that the Respondent has been properly served with all of the documentation provided to the Tribunal and may have been deprived of his opportunity to respond to the application.

6 The Applicant made a number of substantive allegations of breach of covenant against the Respondent as set out in paragraph 5 of the Application which are dealt with in turn below. Although the Respondent has not entered any response to the application the Tribunal will assume that he would not take issue with the actual wording of the relevant clauses in the lease. For that reason it has not been considered necessary in this document to set out the full wording of each of the covenants in the lease. The relevant number of the lease clause is referred to in the context of the discussion below of each of the alleged breaches.

7 The first allegation made by the Applicant was that the Respondent is in breach of his obligation to pay rent (Fifth Schedule para 1). The Applicant had not provided any evidence of rent demands having been made. Mr Austin (page E4) says in his statement that he wrote the Applicant asking him to pay demands for rent and maintenance. No copy of that letter has been provided. No copies of demands for rent or service charge have been provided. There is no indication of how the claimed sum of £40,516.80 is calculated or to what period(s) it relates. There is therefore no credible evidence on which the Tribunal could base a finding of breach of covenant in this case.

8 A similar result ensues from the Applicant's allegation that the Respondent has 'failed to pay local taxes' in breach of para 2 of the Fifth Schedule. No evidence has been supplied to identify which taxes this allegation refers to, how much is owed and over what period. Neither is there any evidence that the Respondent has been notified of this breach and asked to remedy it. This breach not proved.

9 The only evidence supplied of the Respondent's alleged 'failure to keep in good and tenantable repair and condition' (para 3 Fifth Schedule) is Mr Austin's

statement: 'massive internal dilapidation' (page E4). The Applicant has not suppled any evidence that the Respondent was notified of the breach and asked to rectify it. There is no statement of the condition of the property (eg a surveyor's report) and no photographs of the internal state of the flat. Both of these items were requested in the Directions (page B2) and further requested by the Tribunal on 13 March 2020. An estimate for works to the building (not just Flat C) dated 27 September 2018 (page E48) in effect only specifies the type of general repairs/ updating /refurbishment which might be expected of a flat on change of ownership. There is nothing within the estimate to indicate that the flat has been damaged by the action or neglect of the tenant. A number of the items of the proposed works relate to parts of the building which are either part of the structure or the common parts and which in neither case form part of the demise. This allegation is unproven.

10 The comments made in paragraph 8 above also relate to the next two allegations 'failure to paint and repaper every 7 years' (para 4 Fifth Schedule) and 'failure to clean windows' (para 9 Fifth Schedule) which are similarly unproved for the same reasons as cited above.

11 No evidence has been supplied that the Respondent allowed 'water to ingress resulting in flooding of downstairs flats and voiding of insurance' (para 14 Fifth Schedule). This allegation is unsubstantiated as is the allegation of 'removal and thereafter non-replacement of carpets' (para 15 Fifth Schedule).

12 No evidence has been provided of 'leaving the flat full of rubbish' (para 19 Fifth Schedule) which is not proved.

13 In respect of 'failure to pay management company advance payments and service charges in relation to (a) in performance of covenants and (b) as management charges' (para 1 Sixth Schedule) and 'failure to pay the future advanced payments' (para 4 Sixth Schedule) the Applicant has failed to provide any evidence of the periods to which these charges relate, their amounts, how they are calculated or evidence of demands having been correctly served on the Respondent. Without substantiation these allegations remain unproved.

14 In addition to the request for a declaration the Applicant also asked the Tribunal to make a costs order against the Respondent (page E51) . The Applicant does not indicate under which jurisdiction the costs order is sought and gives no indication of the amount sought. Irrespective of those issues the Tribunal considers that to make an award of costs in favour of the Applicant in a case which is so patently lacking in evidence would be totally unjustified and it is accordingly refused.

15 The Law

Commonhold and Leasehold Reform Act 2002 168

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 a leasehold valuation 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.

Name: Judge Frances Silverman as Chairman **Date:** 30 April 2020

Note:
Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the

Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.