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

Case Reference : **LON/00BD/LBC/2013/0075**

Property : **Flat 10, Lichfield Court, Sheen
Road, Richmond, Surrey TW9 1AU**

Applicant : **Festalfine Limited**

Representative : **Carter Bells LLP, solicitors**

Respondent : **Mr Abbas Arabi**

Representative : **Unrepresented**

Type of Application : **Determination of an alleged breach
of covenant under S.168(4) of the
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Mr Jeremy Donegan – Tribunal
Judge**

**Date and venue of
paper determination** : **09 December 2013
10 Alfred Place, London WC1E 7LR**

Date of Decision : **09 December 2013**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Respondent has breached the lease of Flat 10 Lichfield Court, Sheen Road, Richmond, Surrey TW9 1AU (the Flat) by subletting the Flat without the Applicant's written consent.

The application

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent has sublet the Flat without consent, in breach of clause 2 (1) of the lease and the restriction at paragraph 8(b) of the fourth schedule to the Lease.
2. The application was received by the tribunal on 19 September 2013. Following clarification of the application, directions were issued on 11 October 2013. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 09 December 2013.
3. The Applicant filed a bundle of documents in accordance with the directions that included copies of the application, the directions, the Lease, relevant correspondence, a statement from Mr Martin Swain and legal submissions.
4. The Respondent did not file any bundle of documents or respond to the application in any way.
5. The relevant legal provisions are set out in the Appendix to this decision.

The background

6. The Applicant is the freeholder of Lichfield Court (the Building). The Building is a purpose built block consisting of 211 flats.
7. The Respondent holds a long lease of the Flat. The specific provisions of the Lease are referred to below, where appropriate.
8. The tribunal did not consider that an inspection of the Building or Flat was necessary, nor would it have been proportionate to the issues in dispute.

The lease

9. The Lease is dated 02 March 1979 and was granted by the Applicant (Lessor) to John Edward Scott and Marion Scott (Lessee) for a term of 120 years from 24 June 1978.
10. The Lessee's covenants are set out at clause 2 of the Lease and include:
 - 2 (1) *That the Lessee and the persons deriving title under him will at all times hereafter observe the restrictions set forth in the Fourth Schedule hereto*
11. The Fourth Schedule to the Lease sets out various restrictions that the Lessee must comply with, which include:
 8. (a) *Not to underlet or part with possession of part only of the demised premises*
 - (b) *Not (other than by assignment) to underlet or part with possession of the whole of the demised premises either furnished or unfurnished for all or part of the term hereby granted to or with any person without the previous consent in writing of the Lessor such consent not to be unreasonably withheld.*

The issues

12. The application relates to the occupation of the Flat. The Applicant contends that the Respondent has breached covenants in the Lease by subletting the Flat.
13. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Evidence and submissions

14. The grounds of the application were set out in the statement of Mr Swaine dated 07 November 2013. He is the Estate Manager for the Respondent.
15. In his statement, Mr Swaine explains that Mr Arabi is the current leaseholder of the Flat. On 20 February 2013 the Applicant's solicitors wrote to the Respondent regarding two issues; service charge arrears and subletting of the Flat. Enclosed with that letter was a purported Notice under section 146 of the Law of Property Act 1925. The Notice stated that the Respondent had breached the terms of the Lease by

“UNDERLETTING THE PROPERTY WITHOUT WRITTEN CONSENT”. The Notice gave the Respondent 16 days in which to remedy this breach.

16. Mr Swaine also refers to a telephone conversation between the Applicant’s solicitor, Mr Roland Pingree, and the Respondent that took place on 06 March 2013. During that conversation Mr Pingree referred to the subletting of the Flat without consent. A copy of Mr Pingree’s attendance note was exhibited to Mr Swaine’s statement. 1996. This records “AA indicated that his English is not good enough to have read the lease or known about the requirement for consent. RP suggested that AA had used a firm of solicitors to purchase the flat and AA confirmed that he had”.
17. The legal submissions enclosed with the Applicant’s bundle referred to admission forms that the Respondent had filed with Northampton County Court, relating to separate proceedings for unpaid service charges. Copies of these forms were also included in the bundle. In both forms, the Respondent gave his address as Flat 2, 12 Longridge Road SW5 9SL and gave details of rental income. In the earlier form, dated 03 September 2012, his rental income was stated to be £670 per month. In the later form, dated 01 November 2012, the rental income was stated to be £1,343 per month.
18. The legal submissions also referred to the Upper Tribunal’s decision in *Forest House Estates Limited v Dakhil Allah R Al-Harathi [2013] UKUT 479 (LC)*. The Applicant submits that this tribunal’s jurisdiction is strictly limited to whether or not a breach of the lease has occurred.

The tribunal’s decision

19. The tribunal determines that the Respondent has breached the covenant at clause 3(i) the Lease and the restriction at paragraph 8(b) of the fourth schedule to the Lease.
20. The tribunal determines that the Respondent has sublet the Flat without the written consent of the Applicant.

Reasons for the tribunal’s decision

21. The Respondent has not contested the application and the tribunal accepts the unchallenged evidence in the statement of Mr Swaine, which demonstrates that the Flat has been sublet the Flat without written consent.
22. The Respondent was informed of the breach in the letter from the Applicant’s solicitors dated 20 February 2013. He appeared to accept

that he was subletting the Flat in his telephone conversation with Mr Pingree on 06 March 2013. Further the admission forms filed with the Northampton County Court demonstrate that the Respondent was earning a rental income and was not living at the Flat, at the time each form was completed.

23. The notice enclosed with the letter from the Applicant's solicitors, dated 20 February 2013, was not a valid section 146 Notice as section 168 (2) of the 2002 Act had not been satisfied when the notice was served. However it remains open to the Applicant to serve a valid section 146 Notice, following compliance with section 168 (3).

The next steps

24. The tribunal has determined that the Respondent has breached the Lease.
25. The Respondent should remedy the breaches of the Lease, as soon as possible, if he is to avoid further action by the Applicant. That action could include service of a section 146 Notice and possible Court Proceedings to forfeit the Lease.
26. The tribunal strongly recommends that the Respondent seeks independent legal advice upon this decision.

Name: Jeremy Donegan

Date: 09 December 2013

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 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 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.