



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

Case Reference : **LON/00AF/LBC/2014/0024**

Property : **6 Woodchurch Court, Blacksmith Lane, Orpington BR5 4EW**

Applicant : **Affinity Sutton Homes Limited**

Representative : **Cook & Partners Solicitors**

Respondent : **Ms Margaret Elizabeth Stanton**

Representative :

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 : **03 June 2014
10 Alfred Place, London WC1E 7LR**

Date of Decision : **03 June 2014**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the Respondent has breached the lease of 6 Woodchurch Court, Blacksmith Lane, Orpington BR5 4EW (the Flat) by failing to give a notice of transfer of the Flat in accordance with clause 4 (f) of the lease.

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 breached clause 4 (1) of the lease by failing to give notice of two devolutions of title.
2. The application was received by the tribunal on 31 March 2014. Directions were issued on 08 April 2014. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. Neither of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 03 June 2014.
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 and a statement from Mr Christopher Cook dated 23 May 2014.
4. The Respondent did not file any bundle of documents or responded 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 Woodchurch Court (the Building). The Building is a substantial purpose built block of 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 20 March 1989 and was granted by the Mayor and Burgesses of the London Borough of Bromley (the Council) to Annie Stanton (the Lessee) for a term of 125 years from 20 March 1989.
10. The Lessee's covenants are set out at clause 4 of the Lease and include:
 - (f) *Within one calendar month after any such document or instrument as is hereinafter mentioned shall be executed or shall operate to take effect or purport to operate or take effect to produce to the Council's Chief Executive every transfer of this Lease or mortgage or legal charge of this Lease of the Flat or any part thereof and also every underlease of the Flat or any part thereof for substantially the whole of the unexpired term and every assignment of such underlease and also every probate letters fo administration order of the court or other instrument affecting or evidencing a devolution of title as regards the said term of any such underlease as aforesaid for the purpose of registration and for such registration to pay to the Council the fee of £10 (or such other sum as shall from time to time be determined by resolution of the Council's Housing Committee) in respect of each such document or instrument so produced*
11. The Applicant is the successor in title to the Council and has been the registered freehold proprietor of the Building since 26 October 2011. The Respondent is the successor in title to the Lessee and has been the registered leasehold proprietor of the Flat since 09 January 2014. Copies of the Land Registry entries for the freehold and leasehold titles were included in the Applicant's bundle.

The issues

12. The application relates to two devolutions of title of the Flat. The Applicant contends that the Respondent has breached clause 4 (f) of the lease by failing to give notice of these devolutions.
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 Cook dated 23 May 2014. He is the Solicitor for the Applicant.

15. In his statement, Mr Cook explains that the Lessee died in 2008 and that probate to her estate was granted on 26 February 2010. A copy of the grant of probate was attached to his statement, which reveals that the executor was a Mr Stephen Stanton. Mr Cook also explains that the Flat was transferred into the Respondent's name with effect from 09 January 2014.
16. Mr Cook has made enquiries and established that no notice of the grant of probate or the subsequent transfer was given to the Applicant. The Applicant contends that this is a breach of clause 4 (f) of the lease.

The tribunal's decision

17. The tribunal determines that the Respondent has breached the covenant at clause 4 (f) the Lease in that she failed to give notice of transfer of the Flat and pay the registration fee specified within one calendar month of the transfer being executed. However the Respondent has not breached the covenant at clause 4 (f) by failing to give notice of the grant of probate.

Reasons for the tribunal's decision

18. The Respondent has not contested the application and the tribunal accepts the unchallenged evidence in the statement of Mr Cook, which is supported by the copies of the Land Registry entries and the grant of probate.
19. It appears, from the Land Registry entries for the leasehold title, that the Flat was transferred to the Respondent on 09 January 2013, although the transfer was not registered until 09 January 2014. Note 2 in the Proprietorship Register records "The value stated as at 9 January 2013 was £125,000". It follows that notice of the transfer should have been given to Applicant, as the Council's successor in title, by 08 February 2013 and the Respondent has been in breach of clause 4 (f) of the lease since 09 February 2013. The registration fee specified at clause 4 (f) lease should have accompanied the notice.
20. It appears that the Applicant acquired the freehold of the Building in or about October 2011, which was approximately 20 months after probate was granted on 26 February 2010. It follows that the notice relating to the grant should have been given to the Applicant's predecessors (rather than the Applicant). The tribunal has no evidence before it as to whether notice was given to the predecessors in title and cannot say if a breach has occurred, in relation to the grant of probate.
21. The notice of the grant of probate should have been given by the Lessee's executor, Mr Stephen Stanton, rather than the Respondent. The Flat was not transferred to the Respondent until January 2013,

almost 3 years after the grant of probate. Any breach of covenant, arising from any failure to give notice of the grant of probate, occurred on 26 March 2010. This was long before the flat was transferred into the Respondent's name. It follows that the Respondent is not in breach of covenant in failing to give notice of the grant of probate.

The next steps

22. The tribunal has determined that the Respondent has breached the lease.
23. The Respondent should remedy the breach, as soon as possible, if she 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 and repossess the Flat.
24. The tribunal strongly recommends that the Respondent seeks independent legal advice upon this decision and the steps that need to be taken to remedy the breach of the lease.

Name: Jeremy Donegan Date: 03 June 2014

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.