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

Case Reference : CAM/33UG/LBC/2013/0007

Property : 96 Baxter Court, Aylsham Road, Norwich NR3 2ST

Applicant : Danesdale Land Limited, 14 Wilton Road, Salisbury, Wiltshire SP2 7EE

Representative : Emma Colman of Remus Management Ltd (regional manager)

Respondent : Zoe Maria Turner, 9 The Holt, Welwyn Garden City, Herts AL7 2HU

Representative : William Turner (father)

Type of Application : For a determination that a breach of covenant or condition in the lease has occurred
[CLRA 2002, s.168]

Tribunal Members : G K Sinclair, G F Smith MRICS FAAV REV
and D S Reeve OBE MVO

Date and venue of Hearing : Wednesday 22nd January 2014 at
Norwich Magistrates Court

Date of Decision : 24th January 2014

DECISION

1. 96 Baxter Court is a maisonette in a small detached block comprising two maisonettes and a ground floor flat. According to the Statement of Case of the respondent lessee, Ms Turner, it has stood empty since 1998. Perhaps influenced by Norwich City Council's Empty Homes policy, and with the prospect of the interior of the demised premises being improved at no direct cost to herself, by late 2012 Ms Turner had decided to sub-let No 96 to St Martin's Housing Trust and on 3rd January 2013 she wrote to notify her landlord's managing agent that this was her intention. The applicant claims that this letter was not received, and the first that its agent became aware of anything unusual was when a letter dated 4th April 2013 was received from St Martin's Trust, commencing
As you know we have a 3-way lease with yourselves and Mr Turner on this property. I write, as required under the terms of this lease, notifying you of the external works needed in our refurbishment of this property prior to letting it...
2. The property manager, Paul Rann, replied to St Martin's Housing Trust on 24th May 2013, seeking further information about its alleged interest in the property and of the work proposed. Amazingly, no-one thought to ask the lessee, Ms Turner, what was going on. The first letter from managing agent to Ms Turner was dated 4th September 2013 and was addressed to "Miss Z Turner FAO David Goodwin, St Martin's Housing Trust..." No letter was written to her at her home address, although that was where an invoice for interim service charge was sent on 13th May 2013, and from which she replied on 20th May. In her letter, it is to be noted, she makes no mention of sub-letting to St Martin's, or of the lack of reply to her earlier letter.
3. On 18th September 2013 the freeholder applied to this tribunal under section 168 of the Commonhold and Leasehold Reform Act 2002 for a determination that Ms Turner was in breach of covenant, namely that :
 - a. There has been a breach of clause 3(g)(ii) as the lessee has sublet her flat without the consent in writing of the landlord; and
 - b. There has been a breach of clause 4(6) as the lessee has sublet her flat to a Housing Association without ensuring that the insurance company was duly informed.
4. The specific provisions relied upon, and others that are relevant in the lease dated 14th August 1987, read as follows :
 - 3 The lessee hereby covenants with the lessor that the lessee and all persons deriving title under the lessee will throughout the said term:—
 - ...
 - (g) (ii) Not to underlet the whole of the demised premises without the consent in writing of the landlord such consent not to be unreasonably withheld
 - ...
 - (h) Within one month after every assignment assent transfer charge or other devolution of the demised premises give notice thereof in writing with particulars thereof to the lessor's managing agent and produce to the lessor's managing agent a copy certified by a solicitor of such assignment charge transfer or other devolution and pay to the lessor's managing agent as a registration fee such sum as they shall reasonably require together with value added tax thereon in respect of each such assignment assent transfer charge or other devolution
 - ...

4 The lessee hereby further covenants with the lessor and with the lessees of the other flats comprised in the building that the lessee and the lessee's successors in title will at all times hereafter during the said term:—

...

(6) Not to do or permit to be done any act or thing which may render void or voidable any policies of insurance of the building or any part thereof or which may cause an increased premium to be payable in respect thereof and to indemnify the lessor against any increase or additional premium which by reason of any act or default of the lessee may be required and in the event of the demised premises or any part thereof being damaged or destroyed by an [sic] risk against which the same is insured and the insurance money being wholly or partly irrecoverable by reason solely or in part of any act or default of the lessee then in every such case forthwith (in addition to the said rent and additional rent) to pay to the lessor the whole or (as the case may require) a fair proportion of the cost of completely rebuilding and reinstating the same.

5. Despite being directed to do so neither party filed and served a witness statement or Statement of Case endorsed with a Statement of Truth. The Applicant did provide a Statement of Case but stated that the documents exhibited spoke for themselves.

6. The Respondent did not file and serve a Statement of Case by the required deadline. Instead she sought to take the point that because the application and directions identified the Respondent as Zoe Marie Turner, whereas her middle name is Maria, the respondent was a non-existent person and therefore the proceedings did not concern her. When informed that this did not impress the tribunal she then filed a Statement of Case, to which was annexed a bundle of correspondence concerning a service charge dispute between herself and the managing agent. In the Statement of Case she sought to assert that she had not sublet her property "to a Housing Association", on the grounds that St Martin's Housing Trust is a charity and not a formal housing association. On the next page, however, she admits

I have sublet my property to St Martins Housing Trust, as it had been unoccupied since 1998. As a person with a social conscience, I felt that people less fortunate than myself, may derive some benefit as St Martins helps people that have lost their homes through circumstances beyond their control.

The sublet is directly between St Martins Housing Trust and myself and not via any letting agent. A solicitor at nplaw, DX 135926 Norwich 13, drew up the lease after consulting the head lease for the property.

7. In the details annexed to its application form the applicant stated under "History" at point 4 that

The freeholder is responsible for arranging the buildings insurance. A condition of the insurance is that we inform the insurance company in advance of any flats that will be sublet to students, minors, housing associations, local councils, DSS claimants or asylum-seekers. **We communicate this fact to all lessees at the building on an annual basis.** [emphasis added]

In her Statement of Case Ms Turner said that the sentence above in bold was untrue.

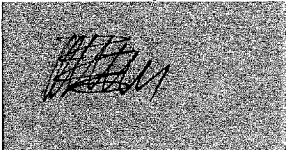
8. Ms Turner did not attend the hearing but was represented by her father. Neither did any of the representatives of the managing agent (Ms Bangs, Mr Rann, Mrs Ray or Ms Littlewood) identified in the correspondence.
9. Mr Turner could not gainsay the fact that his daughter had admitted in her Statement of Case that she had sublet to St Martin's Housing Trust. She said that the sub-lease had been drawn up by a solicitor at nplaw. Nowhere did she ever suggest that she had obtained the landlord's consent. The closest she came was to write a letter on 3rd January 2013 to the landlord's managing agent, informing it of her intention to sub-let but providing no real details as to terms, etc.
10. The managing agent denied ever having received or seen such letter until it was enclosed with Ms Turner's Statement of Case. As there was nobody present to give categorical evidence on the point the tribunal shall treat it as remaining open. However, even if it had been received that would not be good enough to save Ms Turner, even though consent cannot be unreasonably withheld.
11. Section 1(3) of the Landlord and Tenant Act 1988 provides that
Where there is served on the person who may consent to a proposed transaction a written application by the tenant for consent to the transaction, he owes a duty to the tenant within a reasonable time –
 - (a) to give consent, except in a case where it is reasonable not to give consent,
 - (b) to serve on the tenant written notice of his decision whether or not to give consent specifying in addition –
 - (i) if the consent is given subject to conditions, the conditions,
 - (ii) if the consent is withheld, the reasons for withholding it.
12. The covenant requires that she obtain the consent in writing of the landlord. In *E.ON UK plc v Gilesparts Ltd*¹ Arnold J held that the applicability of section 1(3) hinged upon whether the tenant had served on the landlord a written application for consent to the transaction. In that case it had communicated only by e-mail with the landlord's managing agent. As the section requires service upon the person concerned (the landlord) communication with its surveyor or agent was insufficient.
13. In any case, the letter dated 3rd January did not mention a request for consent at all. When she heard nothing in reply why did Ms Turner not write or phone to enquire? Equally, the managing agents' conduct is not free from blemish. When a letter was received from St Martin's Housing Trust in April 2013 why did nobody think of writing to her to find out what was going on? Equally mystifying is the seeming lack of enquiry by the solicitor at nplaw acting for St Martin's Housing Trust, whom one would have expected to insist upon seeing a copy of the consent to sub-letting before proceeding with the transaction – particularly so where Ms Turner does not appear to have used a solicitor herself.
14. The correspondence from the Trust is equally opaque. How could it think it had entered into a "3-way lease" involving Mr Turner, who is not even a party to or assignee of the relevant lease? Why, when asked, did it not supply a copy?
15. While not a breach relied upon in the application, although it is mentioned in the

¹ [2012] EWHC 2172 (Ch); [2013] 1 P&CR 4

applicant's later Statement of Case, the respondent also failed to comply with clause 3(h) by giving notice with particulars of the transaction to the landlord's managing agent, with a copy of the document, and paying any required fee.

16. The first alleged breach is therefore proved.
17. As for the second, despite what was alleged in the application, at the hearing Ms Colman was forced to concede that she could point to no correspondence with lessees which alerted them to insurers' concerns. Information on this subject only appears, she confirmed, in the information supplied with a written consent to subletting, as in the template at exhibit C, at page 88 in the bundle. Further, the applicant has produced no primary document from an insurer confirming that the information given is in fact a requirement of the relevant policy.
18. In these circumstances the tribunal cannot be satisfied, even on the balance of probabilities, that the respondent is in breach of the covenant in clause 4(6).
19. Neither party has covered themselves in glory in the events that have occurred, but the consequences must either be resolved by active engagement between the parties or by a decision of the Norwich County Court in a forfeiture action.

Dated 24th January 2014



Graham K Sinclair
Tribunal Judge