

617



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

Case Reference : CHI/00HY/LBC/2014/0024

Property : Flat 4 & 5, 20 Bedwin Street, Salisbury
SP1 3UT

Applicant : 20/20A Bedwin Street
(Salisbury)Management Limited

Representative : Mr William Dickinson

Respondent : Mr William Dickinson (Flat 4)
Mr Matthew Andrews (Flat 5)

Representative :

Type of Application : Determination of an alleged breach of
covenant

Tribunal Member(s) : Judge Tildesley OBE

Date of Decision : 13 October 2014

**DECISION TO STRIKE OUT AN APPLICATION PURSUANT TO
REGULATION 9 OF THE TRIBUNAL PROCEDURE (FIRST-TIER
TRIBUNAL) (PROPERTY CHAMBER) RULES 2013**

1. On 22 September the Applicants sought a declaration from the Tribunal that the Respondents were not in breach of their respective leases by virtue of an undertaking what is said to be a limited amount of business use from the properties.
2. The Tribunal took view that it had no jurisdiction to deal with the application. This was because section 168 of the Commonhold and Leasehold Reform Act 2002 enables a landlord to apply to the Tribunal for a determination that a breach of covenant or condition in the lease has occurred, not where the landlord is claiming that a breach has not occurred.
3. The Tribunal, therefore, gave notice to the parties to strike out the application on the ground that the Tribunal did not have jurisdiction in relation to the determination sought.
4. The parties were invited to make written representations by 17 October 2014 as to why the application should not be struck out.
5. Mr Dickinson responded in his capacity as Managing Director for the Applicant. Mr Dickinson said that he had spoken with an advisor at LEASE who advised him to re-draft the submission in the form of a complaint against the two Respondents and to leave the matter of defending the complaint to the Respondents when they were served directions.
6. Mr Dickinson explained the reason for bring this application was that he, in his capacity of landlord and managing agent, must treat all the leaseholders in an even-handed manner. In this instance Mr Dickinson brought proceedings against himself in his capacity of leaseholder because of what he termed a *vexatious complaint* raised by the leaseholder of flat 6. The Tribunal is aware of the ongoing dispute between the parties.
7. The Tribunal decides that it has no jurisdiction to hear the Application because:
 - The purpose of Section 168 Proceedings is to establish a breach of the tenant's covenant in order to bring proceedings to forfeit the lease. In this case the Applicant has no intention of forfeiting the leases of Mr Dickinson and Mr Andrews.
 - There is no dispute between the parties. They are in agreement that the Respondents are not in breach of their leases.
 - The reality is that Mr Dickinson has brought proceedings against himself with a view to securing the approval of the Tribunal for his present use of the flat. The Tribunal is there to deal with genuine disputes not to give legal advice. In this respect Mr Dickinson may be best advised to seek the services of a solicitor.

8. The Tribunal, therefore, strikes out the Application on the grounds of no jurisdiction (rule 9(2)(a) of the 2013 Procedure Rules) and that it amounts to an abuse of the process (rule 9(3)(d) of the 2013 Procedure Rules)

RIGHTS OF APPEAL

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