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

Case reference : **LON/00AT/LSC/2015/0023**

Property : **Flat 5, The Vineyards, High Street,
Feltham, Middx, TW13 5HH**

Applicant : **Lakeside Developments Limited**

Representative : **Spalter Fisher LLP**

Respondent : **Kamlesh K Madar and Jasbir K
Madar**

Type of application : **Determination of an alleged breach
of covenant**

Tribunal member : **Judge Timothy Cowen**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **11 May 2015**

SUBSTANTIVE DECISION

Decision of the tribunal

The Applicant's application for a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 is dismissed.

The application

1. The Applicant seeks a determination under section 168 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that

the Respondents are in breach of various covenants contained in a lease dated 16 November 1966.

2. The application to the tribunal was dated 9 March 2015. Directions were given this matter on 13 March 2015. The matter was allocated to the paper track to be determined without a hearing. The parties were given until 17 April 2015 to request an oral hearing. No such request was made. I have therefore decided this matter without a hearing.
3. The Tribunal wrote to the registered mortgagee of the leasehold estate, Mortgage Express, on 13 March 2015 enclosing a copy of the application and directions and informing the mortgagee of its right to apply to be joined. No application had been made by mortgagee to be joined to the proceedings.
4. The Tribunal has on 13 March 2015 sent a copy of the application and directions to the property addressed to "the occupiers". No application has been made by any occupier to be joined to the proceedings.
5. The Respondents were directed to prepare a bundle containing amongst other things a statement of their case and their evidence. The Respondents have played no part in the proceedings since then or before. The address given for the Respondents in the register at H M Land Registry is the address of the Property itself. The address given for the Respondents in the application is 75 Ranelagh Road, Southall.
6. I do not know whether 75 Ranelagh Road is the true address for the Respondents and I do not know how the Applicant knows that it is. I am therefore not satisfied that this application has properly come to the attention of the Respondents. I have, however, decided that there is insufficient evidence to establish a breach of covenant as alleged by the Applicant. There is therefore no purpose to be gained by further directions aimed at tracing the true address of the Respondents. I am satisfied that it is appropriate to dismiss this application on its merits on the papers before me without troubling the Respondents further.

The Lease

7. The Property is a first floor flat in a purpose built block of 12 flats. There is a lease of the Property dated 16 November 1966 ("the Lease") for a term of 999 years from 25 December 1965 at a ground rent.
8. The Applicant is the current registered proprietor of the reversion expectant upon the Lease and has been registered as such since 21 November 1989 under title number AGL9184 at H M Land Registry. The Lease is noted against the Applicant's title.

9. The Respondents have been registered at H M Land Registry as the joint proprietors of the leasehold estate since 24 June 2003 under tile number NGL28069.
10. The Lease contains the following relevant covenants:
 - (i) At clause 2(h), a lessees' covenant not to underlet at a rent lower than that reserved in the Lease.
 - (ii) At clause 2(i), a lessees' covenant to insert certain clauses in every underlease.
 - (iii) At clause 2(w) a lessees' covenant to observe the regulations contained in the third schedule.
 - (iv) At clause 6 a proviso for re-entry in the event of a breach of covenant by the lessees.
 - (v) At paragraph 1 of the Third Schedule a regulation to be observed by the lessees "to use and occupy the flat as a private dwellinghouse for the sole occupation of the Lessees and the family and servants of the household of the Lessees and for no other purpose."

The alleged breach and the evidence

11. The application pleads that the Respondents have breached paragraph 1 of the Third Schedule because they "are currently sub-letting the flat". The Applicant claims that the Respondents have admitted the breach because an email from a managing agent states that the flat is currently rented.
12. The email in question is attached to the application. It is dated 26 February 2015. It appears to follow a telephone conversation between the Applicant's solicitor, Julian Spalter, and some managing agents called Housing Solutions. It seems that in the telephone conversation Mr Spalter was told that flat 5 is "currently let" and that Housing Solutions were the letting agent. Mr Spalter asked in his first email to Housing Solutions for them to confirm that assertion by email.
13. After a chasing email, on 27 February 2015 Mac Bolina of Housing Solutions confirmed that his organisation was "still managing the property known as 5 The Vineyards" and, after further prompting, on the same day emailed to say "The property is rented".

Analysis

1. Under section 168(4) of the 2002, the landlord can apply to this Tribunal for a determination that a breach of covenant has occurred. The test I must apply is therefore whether, on the balance of probabilities, a breach has occurred.
2. In order to determine that question I must first consider what elements would amount to a breach of the covenant in question. The clause relied upon by the Applicant is a covenant to comply with regulations. The regulation in question is an obligation by the lessee "to use and occupy the flat as a private dwellinghouse for the sole occupation of the Lessees and the family and servants of the household of the Lessees and for no other purpose".
3. This regulation by itself would therefore be breached if there was evidence that the flat was being used for some purpose other than as a private dwellinghouse for the occupation of the Lessees etc.
4. The definition of "the Lessees" in the introductory portion of the Lease includes, where the context so admits, the Lessees' executors administrators and assigns.
5. Also, it is important to keep in mind that there is no clause absolutely prohibiting or requiring consent for underletting of the Property and clauses 2(h) and 2(i) of the Lease (cited above) positively anticipate that underletting may occur with certain restrictions and requirements.
6. It follows that evidence that the Property is "rented" is not evidence of a breach of covenant of the Lease. Renting out is not prohibited and may be done without the need for the Applicant's consent.
7. The Applicant is presumably relying on the fact that the Tribunal can draw the inference that a letting would involve someone other than the Lessees occupying the Property and that any letting would therefore breach paragraph 1 of the Third Schedule. I do not think it is necessary or sound to draw that inference. There is no evidence in this case to whom the property is rented. It may be a member of the Lessees family or household. It may be someone who otherwise falls within the definition of the word "Lessees". I do not know whether the Lessees continue to live with the renter in part or all of the Property. Without evidence of any of those matters, this Tribunal cannot come to the conclusion that the Property is being used other than for the purpose required by paragraph 1 of the Third Schedule.
8. In addition, the evidence itself is weak. There is no evidence of any connection between the Lessees and Mac Bolina of Housing Solutions. I have no material from which to draw the inference that Mac Bolina is genuinely the Lessees' agent or that Housing Solutions genuinely has any legitimate connection to the Property. Housing Solutions and Mac Bolina are just names on emails as far as this Tribunal is concerned.

9. For all these reasons I have reached the conclusion that there is no evidence of a breach having occurred.
10. I therefore dismiss the Applicant's application.

Name: Judge Timothy Cowen **Date:** 11 May 2015