



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

Case Reference : CHI/00HN/LBC/2015/0009

Property : Flat 1, 76 Drummond Road, Bournemouth,
Dorset, BH1 4DT

Applicant : Tyrrel Investments Inc

Representative : Ian Newbery & Co Solicitors

Respondent : Christopher Charles Lovett
Rosemary Patricia Lovett
Margaret Rose Philbey

Type of Application : Section 168(4) of the Commonhold &
Leasehold Reform Act 2002

Tribunal Member(s) : Judge D R Whitney

Date and venue of hearing : Paper determination

Date of Decision : 17 June 2015

DECISION

BACKGROUND

1. This is an application by the freeholder of 76 Drummond Road, Boscombe, Bournemouth, Tyrrel Investments Inc ("the Applicant") that the owners of the leasehold interest in Flat 1, 76 Drummond Road, Boscombe, Bournemouth ("the Flat") Mr and Mrs Lovett & Ms Philbey ("the Respondents") are in breach of the terms of their lease dated 10th October 1989 ("the Lease").
2. The application was made dated 30th April 2015 and directions were given on 1st May 2015. In accordance with paragraph 9 of the directions dated 1st May 2015 no response was received by the Applicants from the Respondents save for a copy letter from Mr and Mrs Lovett to a Miss Williams at the Flat.

THE LAW

3. The relevant law is Section 168 of the Commonhold and Leasehold Reform Act 2002. A copy is annexed hereto marked A.
4. The Lease is dated 10th October 1989 made between (1) Stephen Victor Luker and Robert Leslie Oram (2) Simon John Gooding and Anne Patricia Owen. The relevant part is paragraph 8 of The Third Schedule which states:

"Not to underlet the Demised Premises or any part thereof for any term whatsoever without the previous consent in writing of the Lessor such consent not to be unreasonably withheld"

DETERMINATION

5. The tribunal had regard to a bundle of documents submitted by the Applicant in accordance with the directions given. References to page numbers in [] are to pages in that bundle.
6. The tribunal noted that at [30-35] inclusive were Land registry official copy entries confirming that the freehold belonged to the Applicant and the respondent owned the Lease of the Flat. A complete copy of the Lease was filed with the application.
7. The application at [5] refers to the Applicant having received complaints as a result of the behaviour of the Respondents sub-tenant. The Applicants solicitors contend that no consent to any sub-letting has been requested or given. At page [7] is a statement of truth.
8. The Respondents have submitted no documents save for a letter dated 5th May 2015 addressed to a Miss Tiffany Williams at the Flat. This appears to be a letter purporting to terminate her tenancy [38]. No explanation is given or suggestion that consent has been given or sought. On the face of it the letter appears to be from two of the respondents to a person described by them as their tenant at the Flat.

9. The tribunal has had regard to all the documents. In particular it places due weight on the letter copied to the Applicants solicitors from two of the Respondents. The terms written in this letter amount to a clear admission as to sub-letting and the inference from what is said is that the respondents are ending the tenancy due to the Applicants action.
10. In light of the documents filed the tribunal is satisfied that The Applicants application should succeed in full. The tribunal is satisfied that the Respondents are in breach of paragraph 8 of the Third Schedule of the Lease in that the Respondents have sublet the property and have not obtained the Applicants consent to this or any underletting.

Judge D. R . Whitney

Appeals

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.

ANNEX A

Section 168 of the Commonhold and Leasehold Reform Act

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 a leasehold valuation 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