FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AF/LBC/2014/0073**
Property	:	**Flat C, 123 Croydon Road, London SE20 7TT**
Applicant	:	**Ms B Lawrence**
Representative	:	**Baldwin & Co. Solicitors**
Respondent	:	**Ms A Arthur**
Representative	:	**None**
Type of Application	:	**Application for determination under section 168(4) Commonhold and Leasehold Reform Act 2002 (breach of covenant in lease)**
Tribunal Members	:	**Judge P Korn (Chairman)** **Mr T Sennett FCIEH** **Mrs L Hart**
Date of Decision	:	**3rd February 2015**

DECISION

Decision of the Tribunal

The Tribunal determines that, on the basis of the evidence provided, a breach of covenant under the Respondent's lease has not occurred.

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 a breach of covenant has occurred under the Respondent's lease.

2. The Respondent is the leaseholder of the Property and the Applicant is her landlord. The Respondent's lease ("**the Lease**") is dated 22nd December 1987 and was originally made between Anthony Zaremba (1) and Michael Anthony Finch (2).

3. The Applicant contends that the Respondent has committed the following breaches of the Lease:-

    - the making of unlawful alterations and the using of the Property as a multi-occupancy property in breach of clause 11 of the Lease;

    - failure to occupy the Property as a single dwelling in breach of clause 11 or clause 24 of the Lease (unclear which clause or clauses the Applicant intended to refer to); and

    - causing a nuisance to the Applicant and other occupiers of "the flat" by virtue of "the constant flow of people" in breach of clause 12 and/or clauses 11 and 24 of the Lease (again unclear which clause or clauses the Applicant intended to refer to).

4. The Respondent has not responded to the application and has not submitted a statement of case. It appears, on the basis of the evidence, that she is not living at the Property. The Tribunal has written to her at possible alternative addresses supplied to it. The Tribunal has also written to her mortgagee, namely Bank of Scotland, but has not received a response from the mortgagee, albeit that copy previous correspondence supplied by the Applicant indicates their involvement at a much earlier stage.

5. No oral hearing has been requested and, as the Tribunal considers this to be a case which is suitable to be dealt with on the basis of the papers alone, the Tribunal has made its decision on the basis of those papers without an oral hearing.

Applicant's case and Tribunal's analysis

6. The Applicant's case consists of the application, a copy of the Lease, office copy title entries, some copy correspondence and some evidence as to who might be in occupation of the Property.

7. The Applicant has not set out her case in a formal manner and in particular has not (save as mentioned below) set out full details of the covenants alleged to have been breached together with clear evidence of such breaches.

8. In relation to the first alleged breach referred to in the application, the Applicant states that the Respondent has made unlawful alterations and has used the Property as a multi-occupancy property. The clause of the Lease cited is clause 11, but the Lease does not in fact contain a clause 11. It may well be that the Applicant intended to refer to paragraph 11 of the Sixth Schedule which states that *"the Tenant shall not make any alterations in the Demised Premises without the approval in writing of the Landlord to the plans and specifications such approval not to be unreasonably withheld ..."*. That paragraph contains restrictions on carrying out alterations without consent but contains no restrictions against using the Property as a multi-occupancy property.

9. The Applicant's only evidence in support of her allegation that the Respondent has made unlawful alterations seems to be a copy letter dated 29th April 2006 from her to the Respondent simply asserting that she is in breach of the lease covenant regarding alterations.

10. In relation to the second alleged breach, the Applicant states that the Respondent has failed to occupy the Property as a single dwelling and cites clauses 11 and 24 of the Lease in support. The Lease does not in fact contain a clause 11 or a clause 24. Paragraph 11 of the Sixth Schedule merely deals with alterations so it cannot be assumed that the Applicant intended to refer to this provision either. It is possible that the Applicant intended to refer to paragraph 24 of the Sixth Schedule, which reads: *"Neither the Demised Premises nor any part thereof shall be used for any illegal or immoral purpose nor shall any trade or business be carried on nor shall any boarders or lodgers be taken and the Tenant shall use the Demised Premises for the purposes of a private residence only"*. It does not state that the Property has to be used as a single dwelling but rather that it can only be used as a private residence and that boarders and lodgers may not be taken.

11. The Applicant's evidence in support of the existence of the second alleged breach seems mainly to consist of a copy or summary of the electoral register and copies of addresses on envelopes. In relation to much of this, there is no evidence as to how current it is and the evidence is unexplained, generally of poor quality, in parts of

questionable reliability and – most importantly – does not seem to constitute evidence of what it seeks to prove. The burden of proof is on the Applicant, and even if it were the case that some or all of the people referred to are in occupation it does not follow that the Property is not being used as a private residence or that there are "boarders or lodgers" at the Property in the absence of any evidence of this or of the status of the occupiers.

12. In relation to the third alleged breach, the Applicant states that the Respondent is causing a nuisance to the Applicant and other occupiers of "the flat" by virtue of "the constant flow of people". She cites clauses 11, 12 and 24 of the Lease in support, but again the Lease does not in fact contain a clause 11 or a clause 12 or a clause 24. Probably the intention was to refer to paragraph 12 of the Sixth Schedule which states that *"the Tenant shall not do or permit or suffer to be done in or upon the Demised Premises anything which may be or become a nuisance or annoyance or cause damage or inconvenience to the Landlord or to the owner or occupier of any other Flat ...".*

13. In support of the existence of the third alleged breach the Applicant has supplied a copy of a letter from its solicitors to the Respondent dated 11th July 2014 asserting that she has been causing a nuisance to the tenant in Flat B. There are also some much older copy letters, but apart from not constituting evidence of the current position they do not seem to allege nuisance in breach of paragraph 12 of the Sixth Schedule. In our view, the evidence provided by the Applicant on this point is simply inadequate to discharge her burden of proof that a breach of covenant has occurred. There are no witness statements, no proper details and there is no other relevant evidence.

Following on from the above analysis, in our view the Applicant has failed to prove her case in relation to any of the alleged breaches referred to in her application and consequently our determination is that a breach of covenant under the Respondent's lease has not occurred.

The statutory provisions

14. The relevant parts of section 168 of the 2002 Act provide as follows:-

"(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 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.

(4) A landlord under a long lease of a dwelling may make an application to a tribunal for a determination that a breach of a covenant or condition in the lease has occurred."

Cost applications

15. No cost applications were made.

Name: Judge P Korn (Chairman) **Date:** 3rd February 2015