



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

Case Reference : LON/00AT/LBC/2015/0100

Property : Flat 18, Islay Gardens, Staines Road, TW4 5DR

Applicant : Triplerose Limited

Representative : Scott Cohen Solicitors

Respondent : Mr Abdul Haq Sahak

Representative : None

Type of Application : For a declaration as to a breach of lease – section 168(4) Commonhold and Leasehold Reform Act 2002

Tribunal Judge : Mr M Martynski

Date of Decision : 17 November 2015

DECISION

Decision summary

1. It is determined that the Respondent has breached the following covenants or conditions in his lease in the following ways:-
 - (a) Clause 3.(6); In or about early 2014, constructing a mobile home thereby making alterations and additions to the demised premises without the consent of the Applicant

- (b) Third Schedule, paragraph 2: by using the demised premises to accommodate another dwelling and accordingly using the premises other than as a single private maisonette
- (c) Third Schedule, paragraph 4; by causing a nuisance and annoyance to the residents of other maisonettes by the construction and continued use of the mobile home

Background

2. The Respondent is the long leaseholder of flat 18 Islay Gardens ('the Premises'), which is described by the Applicant as a flat in a purpose built block. It is apparent from various photographs that I have seen that the block referred to consists of two storeys with what appears to be separate front entrance doors to the flats on the ground and first floors.
3. The lease of the Premises is dated 4 October 1985 and is between Lincoln College Oxford and Ivy Patricia Sweet as Landlord and Tenant respectively. The lease is for a term of 99 years from 25 December 1983. From the lease it appears that the Premises comprise a top floor maisonette. The Premises have demised with them a portion of garden at the front of the building and a side path leading to a patch of garden behind the building. That garden is not immediately adjacent to the building. I presume that the land at the rear that is immediately adjacent to the building is the garden belonging to the flat on the ground floor.
4. The Applicant's application is dated 17 September 2015. The application seeks a determination by the tribunal that a breach of covenant in the Respondent's lease has occurred.
5. Directions on the application were given on 24 September 2015. Those directions provided for the Respondent to file a detailed Statement of Case by 15 October 2015. The application was set down on the Paper Track to be decided without an oral hearing. Neither party requested an oral hearing. I have therefore decided this application on the basis of the papers that I have seen in the tribunal's own file and the bundle of documents provided by the Applicant.
6. It does not appear that the Respondent has filed a Statement of Case or that he has taken any part in these proceedings.

The Applicant's case and evidence

7. The clauses in the lease relied upon by the Applicant in this application are as follows:-

3.(3) To keep the demised premises and all fixtures and additions thereto and all fences sewers and drains thereof in good and substantial repair and condition throughout the term and in such

repair and condition to yield up at the expiration or sooner determination of the term hereby granted.

3.(6) Not to make any alteration or addition to the demised premises without the consent of the Landlord in writing.

4. The Tenant hereby covenants with the Landlord and with the lessees of the other Maisonettes to observe and perform the covenants stipulations and obligations set out in the Third Schedule hereto

THE THIRD SCHEDULE

2. Not to use the demised premises except as a single private maisonette.

4. Not to do or permit or suffer to be done upon the demised premises anything that may be or become a nuisance annoyance or cause damage or inconvenience to the owners or occupiers for the time being of the other Maisonettes or any part thereof.

8. It is relevant to note that the lease defines the "demised premises" as '*the said land and upper maisonette*'. The land referred to in this phrase being the land marked on the plan to the lease, which includes the garden area (behind the garden area immediately adjacent to the building) at the rear of the Premises as described above.

9. In its application, the Applicant alleges that the Respondent is in breach of these clauses by virtue of:

'.....the carrying out of alterations without consent and the use of the premises for multiple households. Both the works carried out in the alterations and the ongoing use of the demised premises have cause [sic] damage and ongoing nuisance and inconvenience to neighbouring flats.'

10. The application goes on to give the following grounds for the application:-

- a. The Respondent has built a structure/extension in the garden of the Demises Premises without consent of the Landlord.
- b. The Applicant is informed that the family of the Respondent reside in the new building whilst the original flat is separately Let.
- c. A Fence to the garden was cut and removed by the works and works carried out in the installation of the structure that have placed the Respondent in breach of its repairing covenants.
- d. New media laid for the purpose of electricity connections from the structure over communal passageways.

11. Included in the papers before me was the witness statement of Ruth Darby dated 2 November 2015. Ms Darby's evidence can be summarised as follows:-

12. Ms Darby lives in a flat adjoining the Premises. She says that in early 2014 a large mobile home was installed in the rear garden of the Premises.
13. Various works were carried out to supply that mobile home with the usual domestic services. She refers to a trench having been dug through a communal concrete pathway to site services for the mobile home and a trench being dug through a neighbouring yard to gain access to a main sewage drain. She states that a manhole has been dug into the garden to access the main drain. She further states that initially a cable carrying an electrical supply to the mobile home had been run over a fence to the Flat (I presume she means the mobile home) but that this had since been removed. She further states that during the works, the fences on either side of the garden were removed and replaced with a breeze block wall, which now surrounds the mobile home. Ms Darby says that to the best of her knowledge, the Respondent now lives in the mobile home with his family and that a couple with two young children reside in the Premises. She further states that a security gate has been installed in the perimeter with a postbox and that a number (18a) has been attached to the mobile home. Ms Darby confirms that the mobile home is a nuisance, inconvenience and annoyance because:-
 - (a) it is an eyesore and will compromise property values
 - (b) it affects her privacy
 - (c) she is concerned with the safety of the installation and services connected to the mobile homeAttached to Ms Darby's statement are photographs showing the mobile home and the land surrounding it including the manhole she referred to in her statement.
14. Also included in the papers was the witness statement of Mr Richard Simmons dated 27 October 2015. His statement can be summarised as follows.
15. Mr Simmons is a property manager employed by the Applicant. He says that he is not aware of any consent being given by or sought from the Applicant in respect of the erection of the mobile home and the works associated with that.
16. Exhibited to Mr Simmons' statement is an Enforcement Notice from the London Borough of Hounslow dated 27 August 2015 in relation to the land. It alleges a breach of planning control by the unauthorised siting and use of a mobile home as a separate, non-incidental and self contained residential unit. The Notice requires the cessation of the use of the mobile home as a self-contained residential unit, its removal and the removal of all resultant debris from the site.
17. Further exhibited to the statement are various photographs of the interior and exterior of the mobile home bearing the date of 10 June 2015. Those photographs show part of the lounge and kitchen

showing signs of occupation (toys, household goods and food with a large flat screen TV mounted on the wall). Debris is shown strewn around the building.

18. In a witness statement dated 27 October 2015, a Mr Yaron Hazan confirms that he was the previous managing agent employed by the Applicant in respect of the Premises. He confirms that no application was received from the Respondent in relation to the works described above.
19. The last witness statement in the Applicant's documents is from Mr Elliot Tucker. That statement is dated 4 November 2015. Mr Tucker says that his grandmother lives in flat 24 Islay Gardens, which is next door to the Premises. Mr Tucker visits his grandmother regularly. He states that the mobile home referred to above appears to be used as a residence and states that a postbox has been installed and a street number displayed (18a). Mr Tucker considers the mobile home to be an annoyance and an eyesore and is concerned for the effect on property values.
20. The only indication I have seen of the Respondent's view on the matter is set out in an email dated 27 August 2015 sent by solicitors (M and S Solicitors) instructed by the Respondent to the Applicant's solicitors. That email states as follows:-

Please note after taking instructions from our client. We state that our client has not built an extension in his garden as referred in your letter dated 19 May 2015.

Our client has recently purchased a mobile holiday home. It is a free standing holiday home with a length of 25 feet long and 12 feet in width approximately. Our client has currently placed this mobile holiday home at the back of the garden. There has not been any building works made to the mobile home.

Further our client has not moved any fence to build an extension in the garden of the property. This mobile home has not caused any nuisance to any neighbour.

Decision

21. I am satisfied on the evidence in this application that the Respondent has:
 - (a) Erected a mobile home in land to the rear of the Premises.
 - (b) Connected services (water, electricity) to that mobile home.
 - (c) Has removed fences to the garden and replaced them with breeze block walls and a security gate.
 - (d) By virtue of the above, has caused, and continues to cause nuisance and annoyance to immediate neighbours.
22. The next question is whether by virtue of the above, the Respondent is in breach of the terms of his lease as alleged in the Applicant's application.

Clause 3.(3): I do not see any evidence that there has been a breach of this clause. It is not clear to me that the removal of the fences and replacement of them with the walls is a failure to keep fences in good and substantial repair. There is no evidence that there is disrepair to the Premises, their fixtures and fittings or the sewers and drains thereof.

Clause 3.(6): I am satisfied that the Respondent has made an alteration and addition to the demised premises (as defined in the lease) by the erection of, what appears to be clearly, a permanent structure connected to the usual domestic services and that he has done this without the Applicant's permission and is accordingly in breach of this clause.

23. *Third Schedule, paragraph 2:* I am further satisfied that the Respondent is in breach of paragraph two of the Third Schedule to lease in that he is using the Premises other than as single private maisonette. He appears to be using the Premises as a maisonette and as a separate home in the garden area.
24. *Third Schedule, paragraph 4:* Finally, I am satisfied that by building and continuing to use the mobile home, the Respondent has been and continues to be in breach of paragraph 4 of the Third Schedule of his lease by causing a nuisance and annoyance to the occupiers of other maisonettes.

Mark Martynski, Tribunal Judge
17 November 2015