



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

Case Reference : **LON/OOAX/LBC/2015/0070**

Property : **39 Norbiton Hall, Kingston upon Thames, KT2 6RB**

Applicant : **Parkcity Limited**

Representative : **Mr C. Comport of Dale & Dale Solicitors**

Respondent : **Ms R. Virk**

Representative : **None**

Type of Application : **For the determination of an alleged breach of covenant**

Tribunal Members : **Judge O'Sullivan
Mr N Martindale FRICS
Mrs L Walter**

Date and venue of Hearing : **9 September 2015 at 10 Alfred Place, London WC1E 7LR**

Date of Decision : **19 October 2015**

DECISION

12. In addition the tribunal was provided with a copy of an abatement notice served in relation to a nuisance caused by the playing of amplified music at excessive volume dated 30 June 2015 and various correspondence with the Environmental Health Team at the Royal Borough of Kingston Upon Thames.

The Respondent's case

13. Ms Virk had set out her case in a bundle which included various letters and emails between herself and Dale & Dale together with some correspondence from Kinleigh Folkard & Hayward, estate agents.
14. Ms Virk explained that she was a professional landlady and had let the Property on 3-4 occasions since she had bought it in 2003. She asserted that the landlord clearly knew that she had let the Property and she therefore thought that she had the landlord's permission. By way of example she relied on a manuscript letter which she said had been sent in October 2010 requesting relevant details of how to rent out the Property. In reply she says that she was informed "*ok to rent out*" but no relevant documents were ever sent to her. She also relied on an email dated 1 January 2015 which informed the landlord of her plan to sublet the Property and asked for relevant forms but accepted that this was marked as draft and there was no proof that this had ever been sent. The tribunal referred the Respondent to the relevant provisions of the lease but was told by the Respondent that the lease was "*not something I'm going to read, there were so many things in that document*". She also asserted that as the Property was purchased with a buy to let mortgage this in itself also gave her consent to let it.
15. After taking the Respondent through the relevant lease provisions she accepted in retrospect that she did not obtain the permission required to let the Property. She also accepted that she had not paid the registration fee, given written notice of the letting and that the letting did not contain a binding covenant to observe the covenants in the headlease.
16. As far as the alleged nuisance caused by the tenants was concerned Ms Virk confirmed that notice seeking possession had now been served. She informed the tribunal that on hearing that there were issues with noise she had been to see the tenants. She suggested that the noise complaints emanated from racism against the sub tenants although she accepted that a noise abatement notice had been served which she had not appealed. She accepted that on service of the noise abatement notice she had not contacted the Local Authority but waited to be contacted but said that she had done everything possible to assist it.

The Law

17. Section 168(4) provides that;

“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 covenant or condition in the lease has occurred.”

The Tribunal’s decision

18. At the hearing Ms Virk accepted that she had sublet the Property without the landlord’s consent, not given written notice or paid a registration fee and not ensured that the subletting contained covenant to observe the covenants in the head lease. The tribunal was in any event satisfied on the basis of the evidence before it that the alleged breaches had occurred. The tribunal therefore found that pursuant to section 168(4) of the 2002 Act the Respondent breached clause 2 and paragraphs 13, 16 and 17 of the Fourth Schedule to the Lease.
19. The tribunal noted and accepted from the documentation before it that the Royal Borough of Kingston Upon Thames had served a noise abatement notice dated 30 June 2015 in relation to excessive noise at the Property. This had been followed by further correspondence in relation to continuing problems. In view of the service of this notice and taking into account the evidence of Mr Warburton the tribunal was satisfied that pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 the Respondent had breached clause 2 and paragraph 4 of the Sixth Schedule to the lease.
20. The tribunal confirms that there was no evidence of any racism on the parts of either Mr Moradoff or Mr Warburton.

Application under section 20C

21. At the hearing the tribunal also heard an application for an order under section 20C of the Landlord and Tenant Act 1985. Having regard to the decisions reached we do not consider it appropriate to make an order under section 20C.

Name: S O’Sullivan

Date: 19 October 2015

Appendix

Relevant provisions in the Lease

Clause 2

The Lessee hereby covenants with the Lessor to observe and perform the obligations on the part of the Lessee set out in the Fourth and Sixth Schedules hereto.

Fourth Schedule

Paragraph 13

Not to underlet the whole of the demised premises upon a furnished basis without first obtaining the written consent of the Lessor such consent not to be unreasonably withheld in the case of a respectable and responsible person.

Paragraph 16

On the occasion of every assignment of the demised premises for the term hereby granted and in every Underlease of the whole of the demised premises to insert a covenant by the assignee and the underlessee or tenant as the case may be directly with the Lessor to observe and perform the covenants on the part of the Lessee and conditions herein contained and for this purpose to give to the Lessor or its agents not less than thirty days' written notice of any such assignment underlease or tenancy agreement intended to be made.

Paragraph 17

Within one month after every assignment transfer underlease or devolution of or transfer of title of the demised premises to give or procure to be given to the Lessor or Lessor's solicitors notice in writing of such deposition...

Sixth Schedule

Paragraph 4

No less shall make any noise in his Flat or play any musical instrument or make any musical or other sound audible on the said blocks of flats outside the Flat between the hours of 11pm and 8am nor at any time in such manner as to cause complaints from other lessees ...