



765
**First-tier Tribunal
Property Chamber
(Residential Property)**

Case reference : **CAM/26UJ/LBC/2016/0013**

Property : **Flat 7 Glen Chess,
Loudwater Lane,
Rickmansworth,
Herts. WD3 4HQ**

Applicant : **Melvyn Paul Clifford**

Respondent : **Mrs. Maheswary Rudramoorthy**

Date of Application : **21st June 2016**

Type of Application : **For a determination that a breach has
occurred in a covenant or condition in a
lease between the parties (Section 168(4)
Commonhold and Leasehold Reform Act
2002 (“the 2002 Act”))**

Tribunal : **Bruce Edgington (lawyer chair)
David Brown FRICS**

DECISION

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1. In respect of the Lease of the property dated 20th July 1962 and the Deed of Surrender and Regrant dated 11th November 1997, the determination of the Tribunal is that there has been no breach of the terms of such leases and the application is therefore dismissed.
2. No order for costs is made.

Reasons

Introduction

3. The Applicant has applied to the Tribunal for a determination that the Respondent is in breach of the terms of a long lease. The application sets out the grounds as follows:-

“On Saturday 12 June 2016 two large vans were seen unloading furniture and other belongings and moving them into flat 7 at Glen Chess. The next day a family of three and their three dogs moved in to the flat. I have spoken to the tenants and they state that they expect to be living in the flat for the next five months at a minimum.”

All of the other residents here at Glen Chess, and in the neighbouring block of flats, are aware of their presence. Witness statements from other residents are available if required”

4. The breach alleged is to:-

“clause 3(1) ii Not to assign or underlet the whole of the Flat without first obtaining a Deed in the form approved by the Lessor’s solicitors containing a covenant by the Assignee with the Lessor to pay the rent and the service charges referred to in Clause 4(b)(i) and otherwise comply with all conditions on the Lessees part contained in the Lease”

5. The Tribunal chair gave directions on the on the 4th July 2016 timetabling the case to a final determination which it would undertake on a consideration of the papers on or after 24th August 2016 unless either party asked for an oral hearing before 12th August. Neither did.
6. Neither party did anything within that timescale. On the 23rd August, the Tribunal received a letter from solicitors instructed by the Applicant enclosing witness statements from the Applicant and Janet Ide both of whom were said, in the letter, to be directors of Glen Chess Enfranchisement Company Limited. The heading to the statements gave that company as the Applicant but neither statement explained why or said what that company’s relationship was to the named Applicant or the property. A copy lease was also provided.
7. The directions order contained a preamble saying:-

“The Tribunal presumes that the Applicant is the only current freehold owner and the Respondent is the only current long lessee of the property and that there are no mortgagees who could be described as interested parties upon whom notice of this application should be served. In the event that these presumptions are wrong, it is the Applicant’s responsibility to notify the Tribunal”

8. The Applicant is, as stated, Melvyn Paul Clifford and at no time has he responded to the preamble. The Deed of Surrender and Regrant describes the original lease as an Underlease. No copy of the proprietorship register of the freehold or leasehold titles have ever been produced.
9. The case was then re-timetabled with a decision to be made on or after 27th September 2016. On the 9th September a letter was received from another firm of solicitors explaining that they represent the Respondent. This attached copies of statements from Rudramkumar Rudrakumar who claimed to be the Attorney of the Respondent and Fabila Ramos.
10. The directions also ordered that the Applicant must file a bundle of documents for the Tribunal to include copies of the application, the directions order, a copy of the lease, any witness statements and any other

relevant documents at last 10 days before the determination. The bundle did not arrive on time but was then received. It did not contain a copy of the application, the directions order or the Respondent's statements. The Tribunal has had to do the best it can with the documents filed.

The Lease

11. The Deed of Surrender and Regrant is for a term of 150 years from the 25th March 1992 with an increasing ground rent. As with most such documents the leaseholder covenants to comply with the terms of the original lease but, in addition, the leaseholder has also covenanted in the terms quoted by the Applicant and set out above.

The Law

12. Section 168 of the 2002 Act introduced a requirement that before a landlord of a long lease could start the forfeiture process and serve a notice under Section 146 of the **Law of Property Act 1925**, he must first make "*...an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred*". It is only a landlord who can make such an application.

Inspection

13. As the members of the Tribunal did not consider that an inspection would assist them in reaching a conclusion in this case, no such inspection took place. The directions order referred to above did offer the parties the chance to make representations about this but no request was made for an inspection.

Discussion

14. The evidence from the Applicant himself simply says that a family has been occupying the property since 10th June 2016 and he had a conversation with the mother on the 15th June. He says "*the tenant confirmed that the family had been let the Property by the Respondent and that the occupants were not the leaseholder or her family. The occupant, who did not provide her name, stated that the family intended remaining for 5 to 6 months as tenants*".
15. The evidence of Janet Ide is that there were occupiers of the property since 10th June who were not the leaseholder or her family. She makes no mention of a tenancy.
16. The evidence of Rudramkumar Rudrakumar states, as has been said, that this person is the Respondent's Attorney. No evidence is produced to support this contention. The evidence from this person is that the property was indeed occupied for about 4-6 weeks in June and July 2016 by a family friend called Fabiola Ramos pending her new property being available. The witness describes this person as "*my guest*". It is also said that there was "*no tenancy agreement, Licence or any other arrangement. No money was paid in respect of rent or her occupation*".
17. Fabiola Ramos also provides a statement saying that she is a friend of the Rudramorthy family. She lived in Cheshunt until her tenancy ended but as she could not synchronise moving into her new property, she was

invited to stay at the property for a few weeks as a guest. She says that there was no tenancy or licence and she paid no rent.

Conclusions

18. The first point to make is that the Applicant's witness statements appear to have been prepared by solicitors and the Applicant is stated to be Glen Chess Enfranchisement Company Limited, not Mr. Clifford. There is no explanation in either the statements or the letter from the solicitors to explain this. In these circumstances, it seems unlikely that the Applicant is the landlord which means that he is simply unable to make this applicant. Even if he were, the only evidence of a tenancy is his version of a conversation he said he had with someone who may or may not have been Fabiola Ramos. He does not quote what was actually said at the time.
19. The evidence said to be submitted on behalf of the Respondent is not much more helpful in the sense that Rudramkumar Rudrakumar produces no evidence to support the contention that he is the Respondent's Attorney and claims that Ms. Ramos was "*my guest*", not that of the Respondent. Both witnesses say that there was no tenancy but they also say that there was no licence which cannot be right. Any occupier in the circumstances alleged must have some sort of legal relationship with the leaseholder. A 'guest' would be a licensee and such a license would not be a breach of the relevant covenant in the lease.
20. It is for the Applicant to satisfy the Tribunal, by evidence, that he is the freehold owner and that there has been an underletting of the property. There is no evidence as to his ownership of the property and the Tribunal does not accept his 'evidence' that there is or has been a sub letting.
21. Finally, the Tribunal noted that Rudramkumar Rudrakumar says in the statement filed that an order for costs should be made against the Applicant. No such order is made because (a) Rudramkumar Rudrakumar appears to have no status in these proceedings and (b) no particulars of any such costs have been submitted.

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Bruce Edgington
Regional Judge
30th September 2016

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.