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

**Case reference** : **LON/00AD/LBC/2017/0091**

**Property** : **Plot 316, Flat 64 Parkspring Court,  
102 Erith High Street, Erith Kent  
DA8 1GL**

**Applicant** : **Hexagon Housing Association**

**Representative** : **Capsticks solicitors**

**Respondent** : **Christopher Scott Emery**

**Representative** : **In person**

**Type of application** : **Determination of an alleged breach  
of covenant**

**Tribunal member(s)** : **Judge O'Sullivan**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of directions** : **14 November 2017**

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**DECISION**

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## **BACKGROUND**

- (1) By an application received on 26 September 2017 the applicant landlord sought a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”), that the respondent tenant is in breach of various covenants contained in the lease. In particular, the applicant asserts that the respondent has underlet the whole of the flat without the consent of the landlord in breach of the covenants contained in his lease. The landlord sets out the covenants complained of in the application as follows;
  - a) By clause 3(16)(a) of the lease the tenant covenants “not to assign underlet charge mortgage or part with possession of part only of the premises”.
  - b) By clause 3(16)(b) of the lease the tenant covenants “not to underlet the whole of the premises”.
  - c) By clause 3(16) (c) of the lease the tenant covenants not to assign mortgage or charge the whole of the premises without the previous written consent of the landlord.
- (2) A procedural judge reviewed the file and noted that the respondent appeared to have admitted the breach by letter dated 19 January 2017, a copy of which had been provided to the tribunal. Accordingly the tribunal wrote to the parties by letter dated 10 October 2017 indicating that given the respondent appeared to have admitted the breach the tribunal was minded to make an order that a breach of covenant has occurred. The parties were invited to make submissions in relation to this within 28 days, that is, before 10 November 2017. The respondent did not make any submissions. The applicant by letter dated 13 October 2017 made a further submission that the breach of covenant had occurred.

## **DECISION**

1. 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.”*
2. The tribunal therefore finds that pursuant to section 168(4) of the Act the respondent tenant is in breach of clause 3(16)(a), 3(16)(b), 3(16)(c) and the mutual covenants contained at clause 2 as he has underlet the whole of the property without the previous consent of the landlord.

**Name:** Judge O’Sullivan

**Date:** 14 November 2017