



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

Case Reference : CHI/43UM/LBC/2017/0049

Property : 22 Bainton Mead, Woking, Surrey GU21
3LW

Applicants : Treeview Trading Limited

Representative : Teacher Stern LLP Solicitors

Respondent : Mr Alan Fowler

Representative :

Type of Application : Breach of Covenant section 168(4)
Commonhold and Leasehold Reform Act
2002

Tribunal Member : Mr D Banfield FRICS

**Date and venue of
Hearing** : Determination on the papers

Date of Decision : 5 April 2018

DECISION

Decisions of the Tribunal

There has been a breach of Clauses 2(c) 2(m) and 2(o) of the lease dated 4 April 1985 Title number SY546891.

The Application

1. The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) that the Respondent is in breach of various covenants contained in the lease. The covenants are:-
 - (i) To comply with statutory notices from local authorities
 - (ii) Not to make alterations to the demised premises without the licence of the landlord
 - (iii) Not to underlet or part with possession of the premises
2. The Tribunal made Directions on 14 December 2017 which set out a timetable for the exchange of documents between the parties leading to the preparation of the hearing bundle upon receipt of which the Tribunal would determine whether an oral hearing was required or if the matter could be decided on the papers.
3. Having examined the bundle the Tribunal considered that the matter was capable of determination on the papers in accordance with Rule 31 of the Tribunal Procedure Rules 2013 unless a party objected. No objection has been received.

Evidence

4. In the “Grounds of Application” dated 24 November 2017 the Applicant refers to Clauses 2(c) 2(m) and 2(o) of the lease the abbreviated content of which is referred to in paragraph 1 above. In respect of clauses 2(c) and 2(m) the following breaches are said to have occurred:-
 - (i) Following an inspection of the flat Woking Borough Council served three improvement notices and a prohibition notice under the Housing Act 2004. Works required were the installation of a full electric heating system, replacement of the existing windows with double glazed windows, plumbing repairs, installation of a fire detection alarm system and a requirement for an electrician to carry out a full safety inspection report.
 - (ii) The Council also identified that an additional room had been created to the rear of the flat which was being used as a bedroom.
 - (iii) Enforcement action was taken and the Respondent was convicted and fined.
 - (iv) Around October 2016 the Respondent installed a window in the additional room without the landlord’s consent.

- (v) An inspection by a Chartered Building Surveyor revealed the window installation to be of extremely poor quality with a risk of localised damage if the defects are not addressed.
 - (vi) In October 2016 Woking Borough Council issued a Buildings Regulations Contravention Notice with respect to the window and on 24 November the Council confirmed that the Respondent had taken no action to comply with its terms.
5. Contrary to Clause 2(o) of the lease the flat is tenanted. The Council has advised that the current tenant entered the flat around August 2016 and remains in occupation.
6. Contained within the bundle are the following documents relevant to the application:-
- (i) Official copy of register of title indicating that Mr Fowler holds a lease for 999 years from 29 September 1976, that he acquired the property on 25 April 2003 and that his address is given as the property.
 - (ii) A full copy of Mr Fowler's lease
 - (iii) Photographs of the window referred to in paragraph 4(iv) above.
 - (iv) Correspondence dated 20 October 2016 from Woking Borough Council as referred to at paragraph 4(vi) above.
 - (v) Correspondence from the Applicant to Mr Fowler regarding the failure to comply with 3 improvement notices and that the premises had been sublet.
7. Mr Fowler has not responded to any of the correspondence either from the Applicant or from the Tribunal. Correspondence has been sent to the subject property and two alternative addresses.

Discussion and Decision

8. I have first of all considered whether Mr Fowler has had sufficient opportunity to participate in these proceedings. Correspondence has been sent to the subject property which the Proprietorship Register indicates is also his address. Two alternatives have also been used and I am satisfied that sufficient opportunity for him to participate has been given.
9. Whilst I am likewise satisfied that the lease contains the covenants referred to, the evidence of their breach is somewhat sparse. The Applicant refers to three Improvement Notices and a Prohibition Order but copies have not been provided. A copy of the Building Regulation contravention notice is included but no confirmation from the Council has been given as to whether it has been complied with. Likewise the only reference to a subletting is contained in the Grounds of

Application at paragraph 13 and in their letter to the Respondent dated 3 May 2016.

10. Photographs have however been provided indicating that a window has been somewhat inexpertly inserted into the gable wall at first floor level.
11. Given the paucity of evidence I have to consider whether it is sufficient for me to rely on the "Grounds of Application" dated 24 November 2017. In doing so I have noted that the information it contains is detailed and specific, it has been prepared by a solicitor and it contains a signed statement of truth. In these circumstances I accept that the information it contains can be relied upon without further evidence in support.
12. I therefore determine that the Lessee Mr Fowler is in breach of Clauses 2(c) 2(m) and 2(o) of the lease dated 4 April 1985 Title number SY546891.

D Banfield FRICS

5 April 2018

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

S.168 No forfeiture notice before determination of breach

(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 (c. 20) (restriction on forfeiture) 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.

(3) But a notice may not be served by virtue of subsection (2) (a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) 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 a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b) has been the subject of determination by a court, or

(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.