



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

Case Reference : **LON/00BA/LBC/2017/0107**

Property : **214a Burlington Road New Malden
KT3 4NW**

Applicant : **Chartquote Ltd**

Representative : **Mr Webb, Counsel ,Colman Coyle
Solicitors**

Respondent : **Mr C Boyle, Tenant**

Representative : **In person**

Type of Application : **Breach of covenant**

Tribunal Members : **Judge F J Silverman Dip Fr LLM
Mr S Mason FRICS**

**Date and venue of
Hearing** : **10 Alfred Place, London WC1E 7LR
29 January 2018**

Date of Decision : **29 January 2018**

DECISION



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DECISION

Decision of the tribunal

The tribunal determines that the Respondent Tenant is in breach of covenant in relation to Clause 2 (11) and 2(13) of his lease.

Reasons

1 By an application dated 31 October 2017 the Applicant landlord sought a declaration from the Tribunal that the Respondent tenant was and remains in breach of covenant of his lease. Directions were issued by the Tribunal on 24 November 2014.

2 The matter was heard by a Tribunal on 29 January 2018 at which the Applicant was represented by Mr Webb of Counsel and the Respondent attended in person.

3 The Applicant landlord is the freeholder of the building at 214a Burlington Road New Malden KT3 4NW (the property).

4 The Respondent is the tenant of the property.

5 The lease under which the Respondent holds the property is dated 14 June 1991 (the original lease) as extended by a lease dated 17 February 2011 (the new lease).

6 Clause 4 of the new lease contains a number of covenants given by the tenant including:

'This lease is made upon the same terms and subject to the same covenants, provisos and provisions as are contained in the previous lease except as to the rent and term of years granted so that this lease is to be construed and take effect as if those terms, covenants provisos and conditions were except as above repeated in this lease in full with such modification only as are necessary to make them applicable to his demise and the parties to this lease'

7 Clause 2 of the original lease contains the following covenants given by the tenant :

'(11) And also will not at any time during the said term without the licence in writing of the Lessor first obtained erect any additional buildings on the Demised Premises or alter the front elevation or cut or alter any of the principle timbers or walls of the demised premises or the building

'(13) And also will not do or suffer to be done in or upon the demised premises or any part thereof any act or thing which shall or may be or become a nuisance damage or annoyance or inconvenience to the lessor or its tenant or the occupiers of any of the adjoining premises or the neighbourhood and to observe all statutory provisions contained in any regulation made by any duly constituted authority or in any policy of insurance relating to the demised premises'.

8 The Applicant avers that the Respondent has, contrary to the covenants set out above, built a large timber outbuilding within the demise of the property and further, that the structure has been built without the necessary planning permission as a result of which the local council require it to be demolished.

9 The Respondent said that he had not been aware of the proceedings until a couple of weeks before Christmas, the application having been served on him at a previous address. The address for service had however been that shown on the land registry official copies for the property and he agreed that he had failed to notify the land registry of his change of address. He had failed to respond to the proceedings save for an email which he sent to the Tribunal on 24 January 2018 at 10.00pm and which the Tribunal had not seen. He brought no papers with him to the Tribunal although the Applicant said that he had been served with the bundle of documents as directed in the Directions. The Tribunal concluded that the Respondent had been aware of the proceedings in sufficient time to be able to take legal advice and to respond and had failed to do so. He was therefore precluded from taking any part in the proceedings except for cross-examination of the Applicant's witness.

10 The Respondent said that the unauthorised building had now been removed from the property but brought no evidence to that effect. For the purposes of these proceedings, the remediation of the covenant does not affect the fact that a breach of covenant has occurred and the Respondent's admission taken together with the written (p64) and photographic evidence (pages 61-63) produced by the Applicant clearly demonstrates that an unauthorised building had been erected at the rear of the property.

11 For the Applicant, Mr Kernkraut took the witness stand to place his statement on record (p55). The Respondent chose not to cross-examine the witness.

12 In the light of the above, the Tribunal has little option but to find that the Respondent's breach of covenant is a breach of his lease.

13 This does not however preclude him from seeking relief against forfeiture in the event of such action being taken against him by the Applicant.

14 **Commonhold and Leasehold Reform Act 2002 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.

Name: Judge Frances Silverman
as Chairman **Date:** 29 January 2018

Note:
Appeals

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.