



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

Case Reference : CHI/19UJ/LBC/2019/0030

Property : 3, Lantridge Court, 39 Barleycroft Road,
Portland, Dorset DT5 2AH

Applicant : Synergy Housing Limited

Representative : Capsticks Solicitors LLP

Respondent : Rebecca Gilvear

Representative :

Type of Application : Determination of an alleged breach of
covenant

Tribunal Member : Mr D Banfield FRICS

Date of Decision : 7 October 2019

DECISION

Decisions of the Tribunal

**It is determined that the lessee, Miss Gilvear has breached
Clause 3 (15) (b) of the lease dated 31 July 2008. Title
Number DT364636.**

The Application

1. The Applicant landlord seeks a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act) that one or more breaches of covenant contained in the Respondent’s lease have occurred. In particular, the Applicant asserts that the Respondent has sublet the property in breach of clauses 3(15) (a) and (b) of her lease.
2. By Directions dated 12 August 2019 the Tribunal indicated that the application would be determined on the papers without a hearing in accordance with rule 31 of the Tribunal’s Procedural Rules 2013 unless a party objected in writing within 14 days. No objection has been received and the application is therefore determined on the papers.
3. The Directions required the Lessee to serve a statement indicating whether she admitted the alleged breach and if not her reasons for opposing the application. The Applicant was then to reply before preparing a bundle of all the relevant documents for the Tribunal to consider in making its determination.
4. On 4 October 2019 the Tribunal received an email from a Pauline Daniels regarding the costs that the Applicant’s solicitors were claiming to settle the matter and requesting that the hearing is delayed.
5. The Tribunal is not aware of Ms Daniels’ position in respect of the Respondent but in any event the issues raised do not affect the Tribunal’s task which is simply to determine whether a breach has occurred. **The request to delay the hearing is therefore refused.**

The Lease

6. The lease is dated 31 July 2008 and is for a term of 99 years from that date. The official copy of register of title lists REBECCA KURSTE GILVEAR as proprietor. The Lessee’s covenants relevant to this application are at clauses 3(15)
 - a. Not to assign underlet charge mortgage or part with possession of part only of the Premises
 - b. Not to underlet the whole of the Premises

The Evidence

7. At pages 47-53 of the hearing bundle is an investigation report dated 11 December 2018 indicating that at the date of the report the property was sublet and had been continually let other than short breaks between the tenancies since at least 2012. The lettings were managed through a company called Hull Gregson Hull Ltd. Copies of some of the tenancy agreements are at pages 122-138 and a statement from Andrew Harvey of Hull Gregson Hull in confirmation is at pages 146-152.
8. In a letter from the Respondent to Mr Adams of Capsticks dated 3 September 2019 Miss Gilvear states “I am unable to dispute the property

has been sublet without permission from the period of February 2018 until June 2019 when the tenants were evicted by the County Court, having been given the 2 months' notice in writing in December 2018 and still not trying to find another property”

9. Miss Gilvear goes on to explain that from 2008 to 2012 she occupied the flat herself and from 2012 to 2014 received consent to sublet from the Applicant. Lettings had been mainly to family members or connections, safeguarded by the provision of tenancy agreements.

Discussion and Decision

10. The application requires the Tribunal to determine whether a breach of covenant has occurred. The lease is clear that subletting is not permitted and in her letter of 3 September 2019 the Respondent admits that subletting has taken place up to June 2019.
11. In view of this admission the Tribunal does need to decide the status of the lettings that took place between 2014 when consent to sublet lapsed and February 2018 it being sufficient that from February 2018 to June 2019 tenants unconnected with her family were in occupation under a tenancy agreement.
12. **On the evidence set out above I am satisfied that Miss Gilvear has breached Clause 3 (15) (b) of the lease dated 31 July 2008. Title Number DT364636.**

D Banfield FRICS

7 October 2019

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.