



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

Case Reference : **LON/00BG/LBC/2019/0034**

Property : **28 Shadwell Gardens, Cable Street,
London E1 2QH**

Applicant : **The Mayor & Burgesses of the
London Borough of Tower Hamlets**

Representative : **Mrs Anjum Iqbal, Legal Team,
Tower Hamlets Homes**

Respondent : **Mr Syed Yusuf Mobeen Islam (1)
Mrs Habiba Khatun (2)**

Representative : **Unrepresented**

Type of Application : **Determination of an alleged breach
of covenant under S.168(4) of the
Commonhold and Leasehold
Reform Act 2002**

Tribunal Members : **Mr Jeremy Donegan – Tribunal
Judge
Mr Duncan Jagger MRICS – Valuer
Member**

**Date and venue of
paper determination** : **26 June 2019
10 Alfred Place, London WC1E 7LR**

Date of Decision : **26 June 2019**

DECISION

Decisions of the Tribunal

The Tribunal determines that the respondents have breached clauses 3(7) and (8) of the lease of 78 Shadwell Gardens, Cable Street, London E1 2QH ('the Flat'), as detailed at paragraph 12 of this decision.

The application

1. The applicant seeks a determination pursuant to section 168 (4) of the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) that the respondents have breached clause 3(7) and (8) of the Flat lease. The application arises from an assignment of the lease on 24 April 2017. It is alleged that the respondents failed to:
 - (a) enter into a deed of covenant with the applicant, arising from the lease assignment;
 - (b) give notice of assignment and pay a registration fee to the applicant; and
 - (c) provide the applicant with a verified copy of the relevant transfer deed.
2. The application was received by the Tribunal on 25 April 2019. Directions were issued on 02 May 2019. These provided that the case be allocated to the paper track, to be determined upon the basis of written representations. None of the parties has objected to this allocation or requested an oral hearing. The paper determination took place on 26 June 2019.
3. The grounds of the application were set out in a statement of case dated 09 April 2019. The applicant also relied on official copies of the lease and Land Registry entries for the leasehold title for the Flat. The latter are dated 07 May 2019 and reveal that no charges are registered against the Flat. The address given for the respondents is the Flat.
4. The respondents did not file a bundle of documents, as required by the directions, or respond to the application in any way. Further, they have not responded to the Tribunal's letters sent to them at the Flat.
5. The relevant legal provisions are set out in the appendix to this decision.

The background

6. The applicant is the freeholder of a block of flats known as 71 to 84 Shadwell Gardens ('the Building'). The Flat is on the second floor of the Building.
7. The Land Registry entries reveal that the respondents purchased the Flat for £50,000 on 24 April 2017. They have been registered as the proprietors of the Flat since 31 August 2017.
8. The Tribunal did not consider that an inspection of the Building or Flat was necessary, nor would it have been proportionate to the issues in dispute.

The lease

9. The lease was granted by the applicant ("Lessors") to Abdul Hakim and Akiburn Nessa ("Lessees") on 06 May 2002 for a term of 125 years from 04 September 1989. The respondents are successors in title to the Lessees.
10. Various Lessees' covenants are to be found at clauses 3 of the lease, including:

"(7) Not at any time to assign sublet for a period exceeding twelve months or part with possession of the whole or part of the Demised Premises or permit or suffer the same to be done unless there shall previously have been executed at the expense of the Lessee and delivered to the Lessors for retention by them a Deed expressed to be made between the Lessors of the first part the Lessee of the second part and the person or persons by whom it is proposed to assign sublet or part with possession as aforesaid of the third part whereby the person to whom it is proposed to assign sublet or part with possession shall have covenanted directly with the Lessors to observe and perform the covenants on the part of the Lessee herein contained including the covenant contained in this sub-clause but excluding in the case of a subletting the covenant to pay the rents hereby reserved Provided Always that the Lessors shall not themselves be required to execute such Deed

(8) Within four weeks next after any transfer assignment subletting charging or parting with possession (whether mediate or immediate) or devolution of the Demised Premises to give notice in writing of such transfer assignment subletting charging parting with possession or devolution and of the name and address and description of the assignee sub-lessee chargee or person upon whom the relevant term or any part thereof

may have devolved (as the case may be) and to deliver to the Lessors or their Solicitors within such time as aforesaid a verified copy of every instrument of transfer assignment subletting charging or devolution and every probate letters of administration order of the Court or other instrument effecting or evidencing the same and to pay to the Lessors a fee of Twenty five pounds (or such other sum as shall from time to time be determined by the Council in respect of each such document or instrument so produced) for the registration of every such notice together with any Value Added Tax payable thereon of the current rate for the time being in force”

The applicant’s case

11. The applicant states that the respondents have not entered into a deed of covenant in connection with the flat purchase in April 2017. Further, the respondents have not given notice of assignment, paid the registration fee or produced a verified copy of the transfer deed.

The Tribunal’s decision

12. The Tribunal determines that the respondents have breached covenants in the lease by failing to:
 - (a) enter into a deed of covenant with the applicant, as required by clause 3(7);
 - (b) give notice of assignment and pay the registration fee to the applicant within four weeks of the lease assignment (or at all), as required by clause 3(8);
 - (c) deliver to the applicant a verified copy of the transfer deed dated 24 April 2017 within four weeks of the lease assignment (or at all), as required by clause 3(8).

Reasons for the Tribunal’s decision

13. The respondents have not contested the application and the Tribunal accepts the contents of applicant’s statement of case, which is supported by the official copies of the lease and recent Land Registry entries for the Flat.
14. It is clear from the Land Registry entries that the respondents purchased the Flat on 24 April 2017. This transaction involved an assignment of the lease. The respondents have not entered into a deed of covenant with the applicant. Further, they have not provided the applicant with a notice of assignment, the registration fee or a verified

copy of the transfer deed. The documents and fee were due by 22 May 2017, being four weeks from the date of the respondents' purchase.

The next steps

15. The Tribunal has determined that the respondents have breached the lease.
16. The respondents should remedy the breach, as soon as possible, if they are to avoid further action by the applicant. That action could include service of a notice under section 146 of the Law of Property Act 1925 and possible Court proceedings to forfeit the lease and repossess the Flat.
17. The Tribunal recommends that the respondents seek independent legal advice upon this decision and the steps that need to be taken to remedy the breaches of the lease.

Name: **Tribunal Judge
 Donegan**

Date: **26 June 2019**

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 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 the appropriate 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.

(6) For the purposes of subsection (4), “appropriate tribunal” means –

(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) In relation to a dwelling in Wales, a leasehold valuation tribunal.