



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

Case Reference : **LON/00BJ/LBC/2019/0008**

Property : **16 Sunbury Lane, Battersea, London
SW11 3NP**

Applicant : **The London Borough of Wandsworth**

Representative : **South London Legal Partnership**

Respondent : **Mr. Stuart Capewell**

Representative : **Giles Wilson LLP**

**Type of
Application** : **Breach of lease**

Tribunal Member : **Judge LM Tagliavini
Mr W R Shaw FRICS**

**Date and place of
hearing (paper)** : **10 Alfred Place, London WC1E 7LR
17 April 2019**

Date of decision : **17 April 2019**

DECISION

The tribunal's decision:

- 1. The tribunal determines that the Respondent has breached the terms of his shared ownership lease dated 26 July 1984 by subletting part of the premises situate at 16 Sunbury Lane, Battersea, SW11 3NP.**

Background

2. The Applicant seeks a determination of the tribunal, pursuant to the provisions of section 168(4) of the Commonhold and Leasehold Reform Act 2002, that the Respondent has breached the terms of the shared ownership lease dated 26 July 1984 in respect of the property situate at 16 Sunbury Lane, Battersea SW11 3NP (“the property”), by reason of his having sublet the property over a number of years to a number of sub-tenants. The Applicant did not seek a declaration that the Respondent had failed to occupy the subject property as his main or principal home.

The property

3. The subject property comprises a four bedroom flat on the second and third floor of a purpose built block and is subject to a shared ownership lease made between the parties and dated 26 July 1984 for a term of 99 years from 1.1.1981 whereby, the Respondent was granted a 25% equity share in the lease with a liability to pay a monthly rent to the Applicant on the remaining. 75% share.
4. Both parties agreed this matter could be determined on the documentary evidence without the need for an oral hearing.

The evidence

5. Both parties provided the tribunal with documentary evidence which included witness statements and submissions.

The Applicant’s case

6. The Applicant sought to rely upon the witness statement of Kathryn Stewart a fraud investigator, dated 2 January 2019 together with numerous exhibits. The Applicant asserted that the investigations carried out by Ms Stewart demonstrated that the Respondent had let the subject property over a number of years to various tenants, some of whom had registered on the electoral roll at the subject property address. Ms Stewart also asserted that her investigations had revealed that the Respondent’s financial circumstances and that of his wife were linked to an address in Benfleet, Essex from 1987 and demonstrated that he did not occupy the subject property. Further, information received from TV licensing confirmed the Respondent’s address as a licence holder as being at the Benfleet address.
7. The tribunal was also provided with a copy of a tenancy agreement made between the Respondent and Hutchins and Pacheco dated 29 March 2011 at a rent of £1545 per calendar month. The tribunal was also provided with copies of the Respondent’s bank statements showing rental payments made to him in respect of the subject property in various amounts at various dates between 2011 and 2019.
8. In written submissions dated 21 March 2019 from Ms E England counsel, the Applicant submitted that the Respondent was not able to

rely on an argument, that because he had now remedied the breach by obtaining possession of the subject property, a determination of a breach of lease could not be made and that the Applicant is estopped from either enforcing or relying on the covenants alleged to be breached. The Applicant submitted that issues of estoppel against the enforceability of a covenant are outside of the tribunal's jurisdiction.

The Respondent's case

9. In a Statement dated 15 March 2019 the Respondent admitted that he had sublet the property first "informally" or by way of "licences" and then by way of written tenancy agreements. The Respondent stated he had been unaware of the prohibition in the lease in respect of subletting and asserted that the council were aware that he was not living in the premises as they had had his Benfleet address since about 2003. Therefore, as he had now evicted his most recent tenants and regained possession of the subject property, any breach of the lease terms had now been remedied.
10. The tribunal was also provided with written submissions from Mr. P Jolley of counsel dated 14 March 2019, who accepted that issues of waiver are outside of the tribunal's jurisdiction. Mr. Jolley submitted that there is no current breach of clause 3(i) of the lease as the Respondent has not parted with possession of any part as that the operation of this clause has been suspended and that the Respondent is not in breach of clause 4(a) as there are no current tenants. Mr. Jolley submitted that the presence of sub-tenants had been known about by the Applicant for many years although accepted it was not for the tribunal to determine any issues of waiver by the Applicant. Mr. Jolley submitted that the Respondent had at all times been open and honest with the Applicant about his sub-letting of the subject property and therefore the Applicant is estopped from relying upon these matters.

The tribunal's decision and reasons

11. Clause 3 of the lease states:

"The Tenant HEREBY COVENANTS severally with the Landlord and the Companies as follows:-

(i) Not to transfer sublet or part with the possession of a part only of the Property as distinguished from the entirety thereof...."

12. Clause 4 of the lease states:

"The tenant HEREBY COVENANTS with the landlord as follows:-

(a) Not to assign underlet or part with the possession of the Property nor grant any option enabling any person to call for a transfer or under lease of the Property otherwise than a Lease at

a rack rent and not being a mortgage term otherwise than in accordance with Part I of the Eight Schedule herein

(b) Not to use the Property or permit that same to be used for any purpose whatsoever other than as a private dwelling as the only or main residence of the Tenant for his own exclusive use and that of members of his family (as defined in the Housing Act 1980)

13. Notwithstanding the Respondent's admissions of having sublet the subject property, the tribunal is satisfied that the evidence shows that he sublet the subject property from at least March 2011 onwards, until having regained possession in early 2019. The tribunal does not accept that the Respondent's ignorance of the terms of his lease, raises any defence and does not accept the argument that a subsequent remedying of the breach precluded a finding by the tribunal that there has been a breach. Consequently, having regard to the terms of the lease the tribunal finds that the Respondent has been in breach of the terms of the lease as set out above.
14. Further, the tribunal does not deal with issues of estoppel and waiver as it finds these cannot be properly dealt with on the papers only as the parties raise disputes of fact and in any event are outside of its jurisdiction and more properly dealt with in any claim to a 'relief from forfeiture' if necessary.

Costs

15. The Respondent seeks his costs of this application in the sum of £2,896.00 on the grounds that the Applicant has acted unreasonably in making this application under the provisions of rule 13(1) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. The Applicant opposes that application and submits that no order for costs should be made.
16. The tribunal dismisses the Respondent's application for costs. The tribunal finds that the Applicant has acted reasonably in making the application to the tribunal and in light of the Respondent's admission and the tribunal's findings, it finds that the Respondent is not entitled to recover his legal costs.

Signed: Judge Tagliavini

Dated: 17 April 2019