



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

**Case Reference** : **MAN/36UD/LBC/2019/0029**

**Property** : **Flat 27 St Luke's Court, Franklin Square, Harrogate, HG1 5DZ**

**Applicant** : **Yorkshire Housing Association**

**Respondent** : **Mr Yousef Preston**

**Representative** : **In Person**

**Type of Application** : **Commonhold & Leasehold Reform Act 2002 Section 168(4)**

**Tribunal Members** : **Tribunal Judge J.E. Oliver  
Tribunal Member S.A. Kendall**

**Date of Determination** : **11<sup>th</sup> March 2020**

**Date of Decision** : **7<sup>th</sup> April 2020**

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**DECISION**

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## **Decision**

1. The Tribunal determines Yousef Preston is in breach of Clause 4 (1) and Paragraph 1 of the First Schedule of the Lease dated 22<sup>nd</sup> November 1985.

## **Application**

2. This is an application dated 25<sup>th</sup> October 2019 by Yorkshire Housing Association (“Yorkshire Housing”) for an order, pursuant to Section 168(4) of the Commonhold & Leasehold Reform Act 2002 (‘the 2002 Act’) that there have been breaches of the covenant by the Lessee contained in Paragraph 1 of the First Schedule of the Lease relating to Flat 27 St. Luke’s Court, Harrogate (“the Property”).
3. The Lease is dated 22<sup>nd</sup> November 1985 and made between the Yorkshire Metropolitan Housing Association Limited (1) and Andrew Walker (2) (“the Lease”). On 3<sup>rd</sup> January 2017 the term of the lease was extended for a term of 189 years from 1<sup>st</sup> April 1987
4. The Lessee of the Property is Mr Yousef Preston (“ Mr Preston”).
5. The Property is a flat on the second and third floors of a building comprising 29 flats.
6. Directions relating to the application were issued on 21<sup>st</sup> November 2019, providing for the filing of additional documentation and statement by both the parties and thereafter for the application to be determined without an inspection or hearing.
7. Mr Preston has not responded to the application, nor filed any documentation as directed.
8. The matter was listed for determination on 11<sup>th</sup> March 2020.
9. This has been a paper hearing on the papers that has not been objected to by the parties. The form of paper hearing was by video by members of the Tribunal that was fully remote. A face to face hearing was not held because no-one requested the same and all issues could be determined on paper. The documents referred to in this decision are from the bundle supplied by Yorkshire Housing. The order made is at paragraph 1 of this decision.

## **The Law**

10. Section 168 of the Act provides that before a landlord may apply to forfeit any lease for a breach of either a covenant or condition of the lease by the tenant, it must have been determined that a breach has occurred. This can be done either by a determination under 168(4) of the 2002 Act, by the tenant admitting the breach, or by a court making a determination.
11. Section 168 (4), under which the present application is made, provides as follows:

*“A landlord under a long lease of a dwelling may make an application to a First-tier Tribunal for a determination that a breach of covenant or condition of the lease has occurred”*

## The Lease

12. Clause 4(1) of the Lease provides:

*“That the Leaseholder and the persons deriving title under the Leaseholder will at all times observe the covenants set out in the First Schedule.”*

13. Paragraph 1 of the First Schedule provides:

*“Not to use the Premises nor permit the same to be used for any purpose whatever other than as a private residence in single occupation only nor for any purpose from which a nuisance can arise to the owners lessees or occupiers of the other premises in the Building or of the premises in the neighbourhood.”*

## Submissions

14. In 2019, Yorkshire Housing advised it had received complaints by other residents of St Luke’s Court that the Property, amongst others, was being rented out, on short lets, mainly thorough the Airbnb website. The behaviour of those renting the flats was causing disruption to the residents.
15. Yorkshire Housing stated that it had found Mr Preston was letting the Property on the Airbnb website and copies of the advertisements were provided to the Tribunal.
16. Yorkshire Housing described the types of complaints received as *“around noise nuisance, the volume of “strangers in the hallways”, the behaviour of some of the guests (trying to open dorrs on incorrect flats) and the use of their communal areas by those with no connection to it”*.
17. On 12<sup>th</sup> July 2019 Yorkshire Housing sent a letter sent to Mr Preston reminding of his obligations under the terms of the Lease and in particular, the covenant contained within it regarding the use of the Property as a private residence.
18. On 17<sup>th</sup> September 2019 a meeting was held between Yorkshire Housing and Mr Preston (along with the owners of other properties in St Luke’s Court). At that meeting Yorkshire Housing stated Mr Preston confirmed the Property was being let on *“a short term/holiday let/temporary basis”*.
19. The Tribunal was advised that after this meeting Mr Preston continued to let the Property. Yorkshire Housing produced evidence of comments left on the Airbnb website from July to November 2019.
20. The Tribunal was referred to ***Nemcova v Fairfield Rents Ltd [2016] UKUT 303 (LC)***. Here, the Upper Tribunal made a determination whether letting a property through Airbnb was a breach of a covenant that permitted the use of a dwelling as a private residence only. In this case the long lease contained a covenant:

*“not to use the demised premises or permit them to be used for any illegal or immoral purpose or for any purpose whatsoever other than as a private residence”*

21. Here His Honour Judge Bridge said the reference to “private residence” meant:

*“ the question was not whether the premises are being used as the occupier’s home but whether they are being used as a private residence.”*

He continued:

*48. “The clause does not state that the premises are to be used as the private residence of the lessee or occupier, but as a private residence. The use of the indefinite article (“a”) is significant. A person may have more than one residence at any one time- a permanent residence that he or she calls home, as well as other temporary residences which are used while he or she is away from home on business or on holiday. It is immaterial that the occupier may have another, more permanent residence elsewhere as there is no requirement that the occupier is using the property as his or her only (or main, or principal) residence. However, it is necessary, in my judgment, that there is a connection between the occupier and the residence such that the occupier would think of it as his or her residence albeit not without limit of time. In short, for the covenant to be observed, the occupier for the time being must be using it as his or her private residence.”*

22. The judgment concludes that short term lettings, as here, are a breach of the covenant in that lease, it being said:

*“Having considered the context of the lease and the nature of the intended relationship between the lessor and the lessee taking into account of the obligations entered into, I am of the view that in granting very term short lettings (days and weeks rather than months) as the appellant has done necessarily breaches the covenant under consideration”.*

### **Determination**

23. The Tribunal considered the Applicant’s evidence and that Mr Preston had failed to respond to the application. It took note of the statement made by Yorkshire Housing that Mr Preston had admitted using the Airbnb website for short term lettings.
24. When considering the covenant within the Lease, this states it is not to *“be used for any purpose whatever other than as a private residence in single occupation”*.
25. The decision in ***Nemcova v Fairfield Rents Ltd*** states that each case must be considered on its own facts. Here, the covenant prohibits the use of the Property for any other purpose than as a private

residence. ***Nemcova*** establishes that any short-term lettings, of the type arranged through Airbnb, breach a covenant in those terms.

26. The Tribunal therefore determines Mr Preston has breached the covenant contained in the Lease by letting the Property on short-term lets.

Date: 7<sup>th</sup> April 2020

Judge: J.E. Oliver