



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

Case Reference : **LON/00BG/LBC/2016/0055**

Property : **35 Harriott House Jamaica Street
London E1 3DT**

Applicant : **The London Borough of Tower
Hamlets**

Representatives : **-**

Respondents : **Ms Nazneen Akhter**

Representative : **-**

Type of Application : **Application for an order that a
breach of covenant or a condition
in the lease has occurred pursuant
to S. 168(4) of the Commonhold
and Leasehold Reform Act 2002**

Tribunal Members : **Professor Robert M Abbey
(Solicitor)**

Venue of Decision : **10 Alfred Place, London WC1E 7LR**

Date of Decision : **27 April 2016**

DECISION

Decisions of the Tribunal

- (1) The Tribunal grants the application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002.
- (2) The reasons for our decisions are set out below.

The background to the application

1. The Applicant seeks an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. The application concerns alleged breaches (“the alleged breaches”) carried out to **35 Harriott House Jamaica Street London E1 3DT** (“the property.”).
2. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides as follows with sub-section (4) shown in bold:

(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.

3. The property is within a building that contains several purpose built flats. The property is a two bedroom second floor flat. The landlord's title is registered under title number LN71809 and the registered proprietor of that is the Applicant. The Respondent is the registered tenant of the property. Flat 1 is held under a registered lease under title number EGL448548 for a term of 125 years from 5 January 1990 ("the lease"). The Respondent was registered as proprietor of the leasehold title on 04 April 2008.
4. The application before the Tribunal was issued by the Applicant on 7th July 2016. The Applicant alleges in its application breaches of the lease covenants. In particular and in detail, alleged breaches of clause 3(7) and (8) of the lease.
5. Clause 3 (7) of the lease states that the tenant must-

"Not at any time....part with possession of the whole or part of the demised premises or suffer the same to be done unless there shall previously have been executed at the expense of the lessee or delivered to the lessor for retention by them a deed expressed to be made between the lessor of the first part the lessee of the second part and the person or persons to whom it is proposed to assign....of the third part...."

The purpose of this covenant is to ensure that any incoming tenant covenants directly with the lessor/Applicant to observe and perform all the covenants in the lease to make clear that a direct legal/contractual relationship exists between those parties .

Clause 3(8) of the lease states that the tenant must-

"Within four weeks next after any transfer assignment....or parting with possession....to give notice in writing of such transfer assignment....parting with possession....and of the name and address and description of the assignee....and to deliver to the lessor or their solicitors within such time as aforesaid a verified copy of every instrument of transfer assignment....and to pay to the lessor a fee of fifteen pounds....for the registration of every such notice...."

The purpose of this covenant is to ensure that the Applicant/landlord is aware of the contact details of any assignee/transferee for any of the flats in this block such as the property registered in the name of the Respondent.

6. In support of the allegations of covenant breaches the Applicant cites three actions by the Respondent namely,
 - (1) failure to give notice in writing of the assignment/transfer of 4 April 2008,
 - (2) failure to give notice of the name and description of the assignee/transferee and
 - (3) the failure to deliver to the Applicant/lessor or their solicitors a verified copy of every instrument of assignment evidencing the assignment to the Respondent).
7. The Tribunal needs to establish from the written evidence presented to it whether or not, on the balance of probabilities, the Respondent has acted in such a way that she is in breach of a covenant or covenants in the lease and as listed above in extract format in paragraph 5 of this decision.

The issues and the decision

8. The Tribunal had before it a bundle of papers prepared by the Applicant in the form of a lever arch file containing copies of documentation and registered title copies and a copy of the lease as well as copy correspondence. There was no response, in writing or otherwise from the Respondent/lessee
9. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
10. The only issue for the Tribunal to decide is whether or not a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002. Having read the written evidence and other submissions from the Applicant and having considered all of the documents provided, the Tribunal determines the issue as follows.
11. The Tribunal is of the view that there are clear breaches of covenants 3(7) and 3(8) of the lease. The Applicant has confirmed that according to the Applicant's records the Respondent has failed to serve a deed of covenant in the terms required by lease covenant 3 (7) . The Applicant has also confirmed that the Respondent has failed to serve a notice of assignment/transfer in breach of lease clause 3 (8). Implicit in this is a further breach being the failure to supply the name and details of the assignee/transferee in breach of the same covenant.

12. The Applicant referred the Tribunal to the case of *GHM (Trustees) Limited v Glass (2008) LRX/153/2007* which is a decision of the Lands Tribunal about a lease clause in similar terms to 3(8) of this lease. The President George Bartlett QC wrote that “The jurisdiction to determine whether a breach of covenant has occurred is that of the LVT. The question whether the breach has been remedied...is a question for the court in an action for forfeiture or damages for breach of covenant... The breach of covenant has not ceased to exist by reason of the fact that the landlords now know of the assignment and the names of the assignees”.

13. The effect of the Lands Tribunal decision is clear. This Tribunal need only determine whether a breach has occurred. I am satisfied that in the light of the evidence set out above that breaches have occurred and as such this Tribunal grants the application for an order that a breach of covenant or a condition in the lease has occurred pursuant to S. 168(4) of the Commonhold and Leasehold Reform Act 2002

Name: Prof. Robert M. Abbey **Date:** 27.10.2016

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).