



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

**Case Reference** : LON/00AH/LBC/2016/0075

**Property** : Flat 2, 30 Enmore Road, South  
Norwood, London, SE 25 5NQ

**Applicant** : London & Quadrant Housing Trust

**Representative** : Mr R Kholi Counsel- instructed by  
Ms C Steele solicitor for London &  
Quadrant Housing Trust

**Respondent** : Mr Francis Johnson –Beke  
Ms Francesca Johnson- Keneiyboh  
Mr Francis Johnson –Beke in

**Representative** : person

**Also in attendance** : Ms C Steele  
Ms Leanne Madden  
Ms Becky Hook witnesses on behalf  
of the Applicants  
Ms Dionne Alliband

**Type of Application** : Application for a determination  
UNDER Section 168 (4) of THE  
COMMONHOLD AND LEASEHOLD  
REFORM ACT 2002  
in respect of whether the  
Respondent has breached a  
covenant in the lease

**Tribunal** : Judge Daley  
Mr M Taylor FRICS

**Date of Hearing** : 16 November 2016 at 10 Alfred  
Place, London WC1E 7LR

**Date of Decision** : 4 January 2017

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## DECISION

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### **Decisions of the Tribunal**

- (1) The tribunal makes the determinations as set out below.

#### **The application**

- a. On 15th August 2016 the Applicant, made an Application for an order that a breach of covenant or condition in lease had occurred pursuant to Section 168(4) of the Commonhold and Leasehold Valuation Act 2002.
- b. The background to this matter was set out in the witness statement of Ms C Steele and the Application. The grounds of the Application alleged that the Respondents had breached clauses, 3(15) (a) and (b) and clause 1 of the first Schedule to the lease.
- c. The First Respondent Mr Johnson–Beke did not accept that a breach of covenant had taken place. The Second Respondent Ms Francesca Johnson- Keneiyboh did not attend the hearing and did not make any representation.

- (2) Directions were given on 20 September 2016.

- (3) The directions stated at paragraph (2), that -: *“...The tribunal will reach its decision on the basis of the evidence produced to it. The burden of proof rests with the applicant. The Tribunal will need to be satisfied: (a) that the lease includes the covenants relied on by the applicant; and (b) that, if proved, the alleged facts constitute a breach of those covenants.”*

- (4) The Directions also provided that the Applicant should send the Tribunal, and the Respondent copies of the hearing bundle by 6 October 2016, and thereafter that the matter be set down for hearing on 16 November 2016.

## The Background

- (5) The subject Premises, are a 2 bedroom flat situated on the lower ground floor of a converted property, the respondents purchased a share of the lease under a shared ownership scheme, whereby the Applicant enabled the respondents to purchase a 35% share of the for the sum of £63,000.00. The scheme required the Respondents to pay rent on the remaining share in the sum of £584.37 per month.
- (6) The Respondents hold a long lease of the flat, which requires the landlord to provide services and the Respondent leaseholder to observe specific covenants under the terms of the lease. The specific provisions of the lease will be referred to below, where appropriate.
- (7) The Respondents in order to purchase a share of the premises were required to complete an application form which required them to complete a declaration of truth. It is alleged by the Applicant that the Respondents provided false information in order to qualify for the scheme and further in breach of the lease terms referred to above sub-let the premises in breach of clauses 3(15(a) and (b) and clause 1 of the first Schedule to the lease.

## The Hearing

- (8) At the hearing the Applicant was represented by counsel, Mr Ryan Kholi. Neither of the Respondents appeared at the start of the hearing, and the decision was made to proceed in their absence on the grounds that the parties were aware of the hearing, and had chosen not to attend. The second Respondent Ms Johnson –Keneyiboh was stated to reside in the USA, and Mr Johnson-Beke who was aware of proceedings, had stated that he would submit documents on 14 November 2016 and had not done so.
- (9) Part way through the start of the Applicant's case during the evidence of Ms Hook, Mr Johnson-Beke attended the hearing. He apologised for his late arrival and sought an adjournment on the grounds that he had experienced difficulties in obtaining legal representation, and wished to have the opportunity to do so. His application was opposed by Mr Kholi on the grounds of the costs, and Mr Johnson-Beke's failure to comply with the directions.
- (10) The Tribunal determined that the matter should proceed; the Tribunal noted that directions had been given, and the Respondents had failed to comply with those directions. Given this, the Tribunal considered that it was appropriate that the Tribunal make an order under regulation 8(2) (e), which states that:-*8.-(1) An irregularity resulting from a failure to comply with any provision of these Rules, a practice direction or a direction does not of itself render void the proceedings or any step taken in the*

*proceedings. (2) If a party has failed to comply with a requirement in these Rules, a practice direction or a direction, the Tribunal may take such action as the Tribunal considers just, which may include— (a) waiving the requirement; (b) requiring the failure to be remedied; (c) exercising its power under rule 9 (striking out a party’s case); (d) exercising its power under paragraph (5); or (e) barring or restricting a party’s participation in the proceedings. That is, that Mr Johnson-Beke’s participation in the case would be limited. The Tribunal directed that he would not be able to advance evidence in support of his case, although given the seriousness of this matter, and the significance of an adverse finding, he would be able to cross-examine witnesses and make submissions on his own behalf.*

(11) Counsel referred to the relevant provisions of the lease, and provided the tribunal with the background to the matter. He referred to the various written declarations which had been signed by both Respondents prior to the grant of the lease.

(12) In May of this year, Ms Madden the Trust’s Tenancy Verification Officer had been contacted by Mr Andy Lang, Croydon Council’s Fraud & Investigation Manager. He advised Ms Madden that Mr Johnson-Beke had been prosecuted and pleaded guilty in relation to multiple social housing tenancy frauds and that during the course of the investigation it came to light that regular payments were being made to the Applicant housing association, this had led to contact being made, in order to establish whether the Respondents were tenants of the Applicant.

(13) This led to the Applicant carrying out an investigation into the circumstances of the Respondents, which established that Mr Johnson-Beke, together with his sister either separately or with others owned or had tenancies of several properties which were held by social landlords. Shortly after the investigation commenced, Ms Shurleen Samuel contacted Ms Becky Hook (an officer of the Applicant), to say that she was living at the premises as a sub-tenant.

(14) Mr Kholi called Ms Hook to give evidence. Ms Hook had prepared a witness statement for these proceedings; she stated that she was employed by the Applicant as Conveyancing Services Team Leader. Ms Hook confirmed that she had read and signed the statement and that the contents were true to the best of her knowledge and belief.

(15) At paragraph 8 of her statement she stated:- *“Shortly after Croydon Council had been in contact, I received a telephone call from one of the Respondents current subtenants of the Trust’s property, a Ms Shurleen Samuel (who also goes by the name of Maureen) She confirmed that she had lived in the Trust’s property for 17 months and paid Mr Johnson-Beke £320 per month for the use of a small bedroom, shared kitchen and bathroom, such sums being inclusive of bills. She confirmed that she did not have a tenancy agreement and Mr Johnson-Beke came to the property each month in person to collect the rent. She also confirmed that*

*she did not have an address for Mr Johnson-Beke but believed he lived with his mother in the Penge area.”*

(16) In her evidence Ms Hook stated that she was informed by Ms Samuel that she had seen Mr Johnson-Beke on a television programme and had become aware that he might be letting the property illegally. As a result of the telephone call Ms Hook had visited the property. She informed the Tribunal that at the time of her visit, she had gone through the small communal corridor, off the corridor, was a room where the door was locked. She believed the room to be occupied by a Mr Tago and his family. Although the property was small the premises was also being occupied by Ms Karen Arjoon. Ms Samuel had shown her the kitchen and had discussed the way in which the cupboards were arranged.

(17) She had a small cupboard which was for her personal belongings. Ms Hooke described the flat as being very cramped and overcrowded. Ms Samuel had told her that Mr Tago had prevented her from using cupboards and had dictated when the tenants could use the bathroom. Whilst Ms Hook had been talking to Ms Samuel she stated that Mr Tago had arrived, and they had decided to complete the rest of the conversation outside of the property.

(18) Ms Hook had taken several screen shots of mobile phone texts between Ms Samuel and Mr Johnson-Beke, which were exhibited to her witness statement. She also exhibited a signed statement from Ms Samuel which confirmed that she had been granted a tenancy at the property.

(19) The Tribunal were referred to a photograph of a text message from “Frank” that read as follows:- *“Good Morning Maureen Hope you’re well I would need some money from you by tomorrow if u don’t move out as u said you might.”* There was a further text which stated:- *“I haven’t received rent from u from since the beginning of March & your two week deposit ran out by the middle of April...”*

(20) The Tribunal were informed that the contact details held by the Applicant for Mr Johnson-Beke were compared with the number used by Frank to send text messages to Ms Samuel and they were found to be the same. There was a further text which as well as other matters stated of the rent:- *“... On a weekly basis it is £85.00 to stay in the room...”* Counsel referred to the fact that four rents was roughly equivalent to the £340.00 which Ms Samuel stated had been paid by her to rent the room.

(21) Mr Johnson-Beke asked whether Ms Hook was aware that Ms Samuel had mental health problems. Ms Hook stated that she was unaware and was not able to comment on this allegation.

(22) The Applicant called Ms Leanne Madden to give evidence. Ms Madden is a Tenancy Verification officer, following the telephone calls from The

London Borough of Croydon, she had been asked to carry out enquiries on the Applicant's behalf as it was considered that her role as a tenancy verification officer meant that she was best qualified to undertake the investigations. In her witness statement she stated that: *"...In May... I was contacted by Andy Lang, Croydon Council's Fraud & Investigations Manager. He informed me that the council had prosecuted Mr Johnson-Beke for multiple social housing tenancy fraud and during the course of his investigation it came to light from Mr Johnson-Beke's bank statements that he was making regular payments to the Trust. Mr Land contacted me in order to ascertain what those payments related to..."*

(23) Ms Madden had undertaken credit enquiry checks of the property with credit reference agencies; as such enquiries normally established whether someone had links to a particular property or address. She had also checked the electoral role. She had also undertaken credit enquiries in the names of Mr Johnson-Beke and Ms Johnson-Keneyiboh.

(24) Her enquiries had established that Ms Karen Arjoon had substantial financial links to the property such as bank accounts, credit and store cards. The electoral roll had established that between October 2007 and June 2015 there had been 8 named individuals living at 30 Enmore. Ms Madden found that Ms Johnson-Keneyiboh's name did not appear on the electoral roll throughout the period, whereas Mr Johnson-Beke's name only appeared from June 2015 onward.

(25) In relation to Ms Johnson-Keneyiboh the financial checks that she undertook established that her only link with the premises related to the mortgage. There were however links to her mother and brother's property and a Croydon Churches property of which she had had a previous tenancy. However these links ended in 2011, which appeared to confirm that she had most likely emigrated.

(26) In relation to Mr Johnson-Beke he had substantial links to the property at Felmington Road owned with his mother, such as Credit cards, mobile phone contracts, a British Gas Account and general insurance. In relation to the subject premises he had general insurance. In her evidence, Ms Madden stated that the links were in her opinion consistent with his living at Felmington Road rather than the subject property.

(27) In her witness statement Ms Madden concluded by stating: *"...In my view, the information set out above supports the belief that(sic) Respondents never actually lived in the property themselves having sublet the same to various persons (who did not occupy as a single household) since they completed their purchase on 28 February 2007..."*

(28) Copies of the credit reference agency reports together with details of the names on the electoral roll were exhibited to her witness statement. The Applicant also provided documentary evidence in relation to the conviction obtained by the London Borough of Croydon.

## **Closing submissions**

(29) Mr Johnson-Beke made a statement to the Tribunal as part of his submissions. He stated that he did not believe that he was in breach of the lease as he did not consider that he had sublet the property. He stated that Karen was his girlfriend and Ms Samuel and “Eban” had stayed at the property on a short term basis whilst he Mr Johnson-Beke was changing jobs to assist with bills so that he did not fall behind with the mortgage payments.

(30) Mr Johnson-Beke stated, that he had also allowed Ms Samuel to stay at the property for a temporary period. However he asserted that she was not a reliable person. He stated that she had given the statement to the Applicant out of malice, and had fabricated her evidence.

(31) In his closing submission counsel, Mr Kholi referred to the lease provisions in particular clauses 3(15) (a) & (b) and clause 1 of the First Schedule which required both respondents to live at the premises, and not to sublet the premises. Mr Kholi submitted that both respondents had parted with possession of the whole of the premises, in breach of the terms of the lease.

(32) Counsel submitted that there was no evidence to demonstrate that Mr Johnson-Beke had ever resided at the premises. Counsel referred to the texts between Mr Johnson-Beke and Ms Samuel he submitted that if the Respondent had been living at the property all along there would have been no need to exchange communication in this way. He submitted that the assertions made by Mr Johnson-Beke had been made at the 11<sup>th</sup> hour.

(33) The assertions were not supported by the credit reports which demonstrated links to Felmington Road which were more substantial and consistent with him residing there, rather than the subject property. There was also evidence that his sister had resided at 46 Bedser Close (the Croydon social housing property) as her primary residence.

(34) Counsel referred to the evidence of Ms Hook who had attended the premises and had observed that Mr Tago appeared to be in charge of the property in a manner which was consistent with the information given by Ms Samuel.

## **The decision of the Tribunal on the breach of clause 3(15) a & b of the lease**

(33)The Tribunal having heard from the parties and considered the documentary evidence find in relation to clause 3(15) a & b of the lease that the Respondents are in breach of lease which state that the Respondent covenants as follows-: “(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 Tribunal also finds that the Respondents are in breach of clause one of the first schedule which states-: “*1.Not to use the Premises nor permit the same to be used for any purpose whatsoever other than a private residence in single occupation only...*”

(35)The Tribunal in reaching its decision considered the evidence of both Ms Hook and Ms Madden and found it to be reliable and supported by the enquiries made by Ms Madden of credit reference agencies and the electoral roll.

(36)The Tribunal also noted the explanation given by Mr Johnson-Beke which was inconsistent with the documentary evidence and the evidence provided by way of the photographs of Ms Samuel’s text messages both to and from Mr Johnson-Beke.

(37)The Tribunal also referred to the schedule of charges against Mr Johnson-Beke of which he had been convicted in relation to the tenancies obtained by him of two properties, 53 Elveden House, and 272 Shrublands Avenue. The Tribunal have heard no evidence on behalf of Ms Johnson-Keneyiboh, which undermines the evidence of the Applicant.

(38) The Tribunal noted that on 19 August 2006, both Respondents signed a declaration which amongst other matters stated-: “I/We understand that as a council housing association or other public sector tenant, I/we will be required to give up my rented home on the day of completion if I buy or rent a home through any of the RSL or private developer offering low costs homes in London...”

(39)The Tribunal finds that this, taken together with the oral evidence of Ms Hook and Ms Madden, casts doubt on the account given by Mr Johnson-Beke in his submissions.

(40)The Tribunal are satisfied on a balance of probabilities that both Respondents are in breach of the terms of the lease as alleged in the Application.

**Name:**

Ms M W Daley

**Date: 04.01.2017**



## **Appendix of relevant legislation**

A summary of the legislation is set out below

### **The Law**

#### **Appendix**

*Section 168 (2) of Commonhold and Leasehold Reform Act 2002*

*(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 covenant or condition in the lease has occurred.*

*(5) But a landlord may not make an application under (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*

### **ANNEX - RIGHTS OF APPEAL**

- 1. 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.**
- 2. 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.**
- 3. 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.**
- 4. 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.**