

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00HN/LBC/2010/0015

Re: Flat 15 Mildenhall, 25/27 West Cliff Road, Bournemouth, Dorset, BH4 8AX

Between:

Mildenhall RTE Limited
("the Applicant/Landlord")

and

Jeremy Mark Walton
("the Respondent/Tenant")

In the matter of an Application under
Section 168(4) of the Commonhold & Leasehold Reform Act 2002

Member of the Tribunal: Mr John B. Tarling, MCMI (Solicitor) Lawyer/Chairman)

Date of the Tribunal's Decision: 13th August 2010

DECISION

of

the Leasehold Valuation Tribunal.

The Tribunal determines under the Provisions of Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant has occurred. The Tribunal determines that the following breaches of covenant have occurred:

(a) Lease dated 4th November 2005 made between BPT Limited (1) and Jeremy Mark Walton (2):

The Respondent/Tenant is in breach of Covenant 3.3 in that the Tenant has underlet or parted with possession of the demised premises without first obtaining from the under lessee or under tenant a covenant directly with the Lessor to observe and perform all of the covenants on the part of the Lessee and conditions therein contained.

(b) Lease dated 27th June 2008 made between Mildenhall RTE Limited (1) and Jeremy Mark Walton (2). The Respondent/Tenant is in breach of the following covenants:

(i) Covenant 1.5 in that the Tenant has failed to observe the restrictions specified in Schedule 3 thereof, namely that he has used or permitted to be used the demised premises or any part thereof or the other parts of the Building used by the Lessee in common as aforesaid for any purpose from which a nuisance can arise to the Lessor or to the owners, lessees and occupiers of other flats comprised in the Building or in the neighbourhood nor for any illegal or immoral purpose. The Tribunal finds that the Tenant has permitted the occupants of the property on multiple occasions to cause a nuisance to the Applicant, other lessees and occupiers of other flats in the block by way of noise made and behaviour.

(ii) Covenant 1.5 & Paragraph 11 of Schedule 3 in that the Tenant has failed to observe the restrictions which require all floors (excluding for this purpose the bathroom and kitchen floors) to be covered with carpet or other similar material. The Tribunal finds that wooden or laminated flooring has been laid in areas of the property other than the bathroom and kitchen which is in breach of this restriction.

Background to the application

1. On 3rd June 2010 the Tribunal received an application for a determination that there had been a breach of covenant. The documents which accompanied that application included a narrative Statement in writing and copies of the relevant Leases.
2. On 4th June 2010 the Tribunal issued Directions which required the Tenant either to admit the breaches of covenant as alleged, or send to the Tribunal and the Applicant a Statement in writing saying why he contests the application and the reasons why he does to. The Tenant was directed to accompany that Statement with such copy correspondence, documents or other papers as he considers relevant to the matters in dispute. The Tribunal in its Directions gave notice to the parties that it intended to deal with the Application as a paper determination without an oral hearing, unless either party wrote to the Tribunal objecting. Neither party requested an oral hearing and the Tribunal determines the Application as a paper determination.

The Applicants Representations

3. The Applicant has set out its allegations of breach of covenant in a written statement which contained a Statement of Truth and was signed by the Applicant's Solicitor. In summary the alleged breaches of covenant were itemized as follows:
 - (a) The Tenant had sub-let the Flat without having obtained the sub-tenants direct covenant with the Lessor in a Deed of Direct Covenant.
 - (b) That the Sub-tenant had on multiple occasions caused a nuisance by way of noise made and behaviour by the sub-tenants and their guests.
 - (c) That wooden or laminate flooring had been laid in the flat instead of carpet or other similar material.

The Respondent/Tenant's Representations

4. The Respondent/Tenant had failed to comply with the Tribunal's Directions and had failed to either admit the alleged breaches of covenant or give written reasons why he wished to contest the allegations and/or provide documentary evidence in support of his case. The following documents were received from or on behalf of the tenant:
 - (a) A letter dated 7th July 2010 addressed to the Tribunal from the Tenant who gave his address as a property in Dorset. That letter included the words "I can now confirm that my tenants of these premises on which these proceedings appear to be based on, have now moved out." Further on in that letter the tenant writes "Please note that my intention is to sell the property as soon as practicable possible with vacant

possession.“ Regarding the absence of carpets the tenant comments in that letter “In March this year they (the lessors managing agents) alleged I was breaching the lease because there were no carpets in the property, but on subsequent inspection by Abbey Estates this allegation turned out to be an accusation without any foundation...” Abbey Estates were the Agents for the Tenant. No written Statement or letter was supplied by Abbey Estates to corroborate the position regarding the allegation about the absence of carpets.

- (b) A copy of a letter dated 23rd June 2010 from Abbey Estates (the tenant’s Agents) addressed to the Applicants Solicitors. This said that the sub-tenants were moving out of the property on 30th June 2010.

Further written representations

5. On 22nd July 2010 the Tribunal received a letter dated 21st July 2010 from the Applicant’s Solicitors which reminded the Tribunal that the Respondent/Tenant had failed to comply with the Tribunal’s Directions and had failed to make a written Statement contesting the alleged breaches of covenant. The Applicant’s Solicitors confirmed that the Lessors Managing Agents had still not been afforded access to the Property, despite the Tenant’s assurance that the sub-tenants had vacated the property on 30th June 2010. The Applicant’s Solicitors requested the Tribunal to proceed with the determination without the need for an Inspection or a Hearing.

The Tribunal’s determination

6. The Statutory provisions
Section 168 of the Commonhold and Leasehold Reform Act 2002 provides (inter alia)
- (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 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless sub-section (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.
 - (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 a lease has occurred.

The Leases

There were copies of two Leases before the Tribunal:

(A) Lease dated 4th November 2005 made between BPT Limited (1) and Jeremy Mark Walton (2) for a term of 125 years from 25th March 1991

The following Clauses are relevant to this application:

Covenant 1.5 – Covenant by the tenant “To observe the restrictions specified in Schedule 3 hereof.”

Schedule 3, Paragraph 11 contains the following restrictions: “All floors of the flat (excluding for this purpose the bathroom and kitchen floors) shall be covered with carpet or other similar material...”

Schedule 3, Paragraph 2 contains the following restrictions: “not to use or permit to be used the demised premises or any part thereof or the other parts of the Building used by the Lessee in common as aforesaid for any purpose from which a nuisance can arise to the Lessor or to the owners, lessees and occupiers or the other flats comprised in the Building or in the neighbourhood nor for any illegal or immoral purposes.”

(B) Lease dated 27th June 2008 made between Mildenhall RTE limited (1) and Jeremy Mark Walton (2) for a term of 999 years from 24th June 2007. This Lease was a surrender of the previous Lease and the grant of a new term. This Lease is granted subject to the terms of the previous Lease dated 4th November 2005, but with some variations.

The following Clauses are relevant to this Application:

Clause 3.3. – Covenant by the Tenant “Not to underlet or part with the possession of the demised premises without first obtaining from the under-lessee or under-tenant a covenant directly with the Lessor to observe and perform all the covenants on the part of the Lessee and conditions herein contained”

7. The Tribunal reviewed all the documents that were before it. The Applicant had submitted clear written allegations contained in a Statement of Truth signed by the Applicants Solicitor. The Tribunal had issued its Directions giving the Tenant an opportunity to either agree with the allegations or give clear written reasons why he contested the allegations. The Tenant had failed to do either. The Tenant had agreed that he had sub-let but failed to explain why he had not caused his sub-tenant to enter into a Deed of Direct covenant with the Lessor as provided by the Lease. The Tenant had failed to answer the allegations of noise and behaviour by his sub-tenant. In respect of the absence of carpets, there was no corroborative evidence from the Tenant’s Agent as to the existence or absence of carpets as provided by the Lease.
8. On reviewing all the evidence and in the absence of any clear written representations by the Tenant as provided for in the Tribunal’s Directions, and on a balance of probabilities, and for the reasons given above, the Tribunal finds all of the alleged breaches of covenant have occurred.

Dated this 13th day of August 2010

J.B.Tarling

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John B. Tarling, MCMI (Solicitor) Lawyer/Chairman
A member of the Panel appointed by the Lord Chancellor