



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

Case Reference : LON/OOAT/LBC/2014/0011

Property : 102 Wheatlands, Heston,
Hounslow, TW5 0SB

Applicant : Wheatlands Residents Limited

Representative : Mr Michael Gibbons, Director of
Wheatlands Residents Limited

Respondent : Mr Amir Rashid

Representative : (Not present)

Type of Application : For a declaration as to a breach of
covenant – section 168(4)
Commonhold and Leasehold
Reform Act 2002

Tribunal Members : Mr Robert Latham
Mr Frank Coffey FRICS
Mrs Lucy West

**Date and venue of
Hearing** : 19 and 27 June 2014
at 10 Alfred Place, London WC1E 7LR

Date of Decision : 30 June 2014

DECISION

The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2009, the following breaches have occurred:

- (i) The Respondent has permitted a building to be erected in the rear garden without the prior consent of the landlord.

(ii) The Respondent has permitted an enlargement of the front porch area of the property without the prior consent of the landlord.

The Application

1. By an application, dated 30 November 2013, but not issued until 7 February 2014, the Applicant seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2009 (“the Act”) that the Respondent tenant is in breach of two clauses of his lease of 102 Wheatlands, Heston, Hounslow, TW5 0SB (“the property”). The Applicant complains of three matters:

(i) The erection of a breeze block building in the rear garden;

(ii) The enlargement of the front porch area of the property; and

(iii) sub-letting of the property.

2. On 13 February 2014, the Tribunal gave Directions. These were amended on 4 March 2014. The Tribunal directed that this matter should be consolidated with LON/OOAT/LBC/2014/0012.

3. The Tribunal was satisfied that the Applicant’s application form sufficiently set out the alleged breaches. The Respondent was directed to file a full and detailed response to the application by 21 March 2014. A number of documents have been filed. However, the Tribunal is satisfied that the only one which is relevant is a statement filed by Amir Rashid, dated 16 June 2014. The Respondent states that the two structures were “built by the current tenants without my knowledge or permission”. He adds:

“I can confirm that as legal owner and leaseholder of the above property at no point have I been aware of the structure being built and nor would I have given any kind of permission, as this is clearly in breach of the lease conditions”.

4. The Tribunal directed the Applicant to provide Office Copy Entries of both the freehold and leasehold titles to these properties. It is apparent from the Office Copy Entries which were filed that the following have interests in the property:

(i) On 23 May 1979 Cleveland Corp was registered as the freehold owner.

(ii) On 30 June 1976, “Wui Kheong Chong, care of William Sturges and Company” was registered as the long leaseholder.

(iii) On 22 April 1998, the Respondent was registered as lessee. He gave his address as both the property and 10 Osprey Court, Bradford, BD8 ORE.

The Inspection

5. The Tribunal inspected the property on the morning of the hearing. The following represented the Applicant: Mr Michael Gibbons, Director Wheatlands Residents Ltd, and Ms Lynda Durr, of Edgerley Simpson Howe Management Ltd. We were invited to inspect the interior of the property by Mr Imran Khan, who currently occupies it. We were also accompanied by Mr Hahrn Rashid who we understood was the lessee. It subsequently became apparent that he had no authority to represent the lessee.
6. We were able to inspect:
 - (i) A breeze block building in the rear garden. This was about 8 ft high. It was being used for storage.
 - (ii) The enlargement of the front porch area. This was being used as a small play area for the occupant's children.

The Hearing

7. We commenced the hearing at 13.45. We decided to hear this application separately from LON/OOAT/LBC/2014/0009. The Bundles filed by the Applicant did not comply with the Directions given by the Tribunal. The Tribunal had different documents and not all members had copies of the core documents, namely the application form and the lease. We therefore granted a short adjournment to enable the Applicant to produce a Bundle sufficient to enable us to determine the application.
8. Mr Hahrn Rashid purported to appear on behalf of the Respondent and sought to adduce evidence from Mr Imran Khan. He referred us to a Consent Order made in the Leeds County Court in 3LS72684, dated 10 January 2014. It is apparent that there is a dispute between members of the Rashid family concerning this property. The Consent Order records that the Respondent is the legal owner of the property as is recorded on the Office Copy Entries. The Order further records that the Respondent acknowledges that he has no beneficial interest in the property and that it is subject to a mortgage to Santander. It would seem that the Court still has to resolve the beneficial interests in the property.
9. The Rashid family includes (i) Abdul Rashid who apparently resides at 319 Toller Lane, Bradford, BD9 5BS; (ii) the Respondent, his son, who resides at 10 Osprey Court, Bradford, BD8 0RE; (iii) Hahrn Rashid, a second son; (iv) Uzma Rashid, the daughter of Mr Abdul Rashid and husband of Imran Khan. The circumstances in which Mr Imran Khan was admitted into occupation of the property are unclear. There was no evidence to satisfy us that he occupies the property as a tenant.

10. In his statement dated 16 June 2014, Mr Amir Rashid states: “I make it clear that I have not given any permission for Mr Khan or anyone else to attend court to act on my behalf”. He further expressed his concern that Mr Khan had been communicating with the Applicant and the Tribunal purporting to be “the legal owner and leaseholder”. Whilst we were sitting, the Respondent telephoned the Tribunal and spoke to the Case Officer. He again stated that no one had authority to appear on his behalf. He wanted the Tribunal to proceed with the application to avoid further expense.
11. The Tribunal are satisfied that neither Mr Hahrnun Rashid or Mr Imran Khan have any standing to appear before the Tribunal on behalf of the Respondent, the legal owner of the property. Neither did they have any standing to appear in any other capacity. We therefore informed them that we would not hear from them. They accepted our invitation to sit at the back of the room as observers, in the same capacity as any other member of the public.
12. On 19 June, the Case Officer informed the Tribunal that Santander UK PLC had not been served with the application as required by the Directions. We therefore directed that they be forthwith notified. On 20 June, the Tribunal notified them of the application of the application and invited them to make any representation by 26 June. No representations were received by this date. The letter has subsequently been acknowledged.

The Lease

13. The lease under which the Respondent holds his interest is dated 1 August 1968. There are three parties to the lease, namely (i) “the Landlord” - the interest now held by Mr Wui Kheong Chong; (ii) “the Company” - the Applicant; and (iii) “the Tenant” – the interest now held by the Respondent. The Tenant is required to pay the service charges incurred by the Company in repairing and maintaining the common parts. The tenant’s covenants are made with and are enforceable by both the landlord and the company.
14. The Applicant contends that the Respondent has breached the following covenants:
 - (i) Clause 2(6)(a): “not at any time during the said term to make any addition to or alteration in the plan or the elevation of the said premises or any alteration or aperture in any party walls or in the principal and bearing walls timbers or girders without the written consent of the Landlord...”;
 - (ii) Clause 2(11): “not at any time during the said term without the consent of the landlord in writing of the Landlord first had and obtained (sic) to carry out or permit or suffer to be carried out in or over or under the demised premises or any part thereof any improvement or addition or any building.....”.

(iii) Clause 2(22): within one month from the date of any permitted underlease of the property to produce to the Landlord for registration every such underlease and pay a fee of two guineas.

The Law

15. Section 168 of the Act provides as follows:

(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 the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

Background

16. Mr Gibbons gave evidence and relied on the matters specified in the application form and in a letter to the Tribunal, dated 6 June 2014. He explained how the occupant of the property had started work on about 26 July 2013 on the breeze block out-building to the rear of the property and the extension to the front porch area. Complaints were made to the managing agents by neighbours. He had approached the occupant in July 2013. This had been Mr Khan who had been evasive. Mr Khan asserted that he was the tenant and that the owner had given him permission. Mr Gibbons told Mr Khan to cease all building works immediately. Mr Khan was advised to submit plans and a letter requesting consent. Mr Khan ignored this advice and proceeded with the works.

17. On 12 August, the managing agents wrote to the Respondent at the property. This elicited a response from “A Rashid” who gave his address as “319 Toller Lane, Bradford, BD9 5BS”. We are satisfied that this letter was

not sent by or on behalf of the Respondent. It was rather sent by another member of his family without his knowledge.

18. The Respondent had not notified the Applicant that he was not residing at the property. Mr Gibbons confirmed that neither the landlord nor the Company had given consent for these works.

Our Determination

19. The Tribunal have no hesitation in accepting the evidence of Mr Gibbons. We are satisfied that these works were carried out without consent and in breach of the terms of the lease. It is irrelevant whether or not the Respondent had knowledge of the works. He is the lessee. He is responsible for ensuring that there is no breach of the tenant's covenants under the lease.
20. The basis under which Mr Khan currently occupies the premises is unclear. The Applicant did not invite the Tribunal to make a finding that the Respondent was sub-letting the property.

Robert Latham

Tribunal Judge

30 June 2014

Addendum

1. Prior to the Tribunal sending our decision to the parties, it received two letters from "Abdul Rashid" giving his address as "102 Wheatland, Heston, Hounslow, TW5 OSB", namely the property. The first letter is dated "28th July 2014" but was received on 1 July. It is not signed. The second letter is dated 5 July 2014. It is signed. However, the signature seems to differ from that of "Abdul Rashid" who signed a letter to the Tribunal dated 11 March 2014. The Tribunal is satisfied that neither of these letters was not sent by or on behalf of the Respondent. They were rather sent by another member of his family who is not a party to the proceedings. We have directed the Case Officer to notify "Abdul Rashid" that he has no standing in these proceedings.
2. The Tribunal has added this Addendum to assist the parties and the Upper Tribunal should this matter be taken further. "Abdul Rashid" contends that the Tribunal had no jurisdiction in this matter and that we should have stayed the proceedings pending the outcome of proceedings pending before the Leeds County Court. The Tribunal are satisfied that we had jurisdiction in respect of this application and that we were correct to proceed to determine it. Neither of the parties to these proceedings suggested that we should

adjourn the case. No other person has applied to be made a party to these proceedings.

3. The following facts are apparent from the papers before the Tribunal and the information provided to us by the Applicant:

(i) On 31 July 2013, the Applicant wrote to the Respondent at the property complaining of the breach of covenant. The Applicant believed that the Respondent was living at the property. The Respondent had not provided any other address to which correspondence should be sent.

(ii) On 12 August, "A Rashid" giving his address as 319 Toller Lane, Bradford, BD9 5ES responded to this letter. The Tribunal are now satisfied that this letter was not sent by or on behalf of the Respondent.

(iii) On 7 February 2014, the Applicant issued this application. The Respondent is given as "Mr A Rashid". His address is given as the property. 319 Toller Lane is also given as a correspondence address.

(iv) On 13 February, the Tribunal gave Directions. The matter was set down for hearing on 14 April.

(v) On 2 March, "A Rashid" wrote to the Tribunal seeking a 14 day extension. He also wrote to the Respondent copying the letter to the Tribunal. He requested that all future correspondence be sent to the property. The signature on this letter bears no resemblance to that on the letter dated 12 August 2013. The Tribunal is now satisfied that this letter was not sent by or on behalf of the Respondent.

(vi) On 5 March, the Tribunal, on the understanding that the letter was from the Respondent, varied the Directions as requested.

(viii) On 11 March, "Abdul Rashid", giving his address at 319 Toller Lane, Bradford, BD9 5BS, wrote to the Tribunal requesting that the proceedings before the Tribunal be adjourned pending the outcome of proceedings before Leeds County Court. He provided a copy of the Order of District Judge Giles, dated 10 January 2014. On 12 March this letter was e-mailed to the Tribunal. The e-mail was signed "A Rashid". The e-mail was sent by "Imran Khan" (vierick@yahoo.co.uk). The Tribunal is now satisfied that this letter was not sent by or on behalf of the Respondent.

(ix) On 14 March 2014, the Tribunal wrote to Mr A Rashid at the property stating that the e-mail had been considered by a procedural judge who had agreed to postpone the matter for 28 days. The letter went on to state that the parties were still to comply with the Directions and provide dates to avoid in the week commencing 12 May 2014. It is apparent that the Procedural Judge adjourned the matter on the understanding that the letter had been written on behalf of the Respondent.

(x) On 20 March, a detailed Statement in Response was sent to the Tribunal by "Abdul Rashid". The Tribunal is satisfied that this was not sent by or on behalf of the Respondent.

(xi) On 9 May, "A Rashid" notified the Tribunal that the property ownership case was still on-going. The Tribunal is now satisfied that this letter, dated 7 May, was not sent by or on behalf of the Respondent.

(xii) On 4 June, the Tribunal set this matter down for hearing on 19 June.

(xiii) 10 June an application was made, purportedly on behalf of the Respondent, to strike out the claim on the ground that the Applicant had not complied with the Directions. On 16 June, the Tribunal notified the Respondent that the application would be heard at the hearing. The Tribunal is now satisfied that this application was not made with the authority of the Respondent.

(xiv) On 18 June, the Respondent e-mailed the Tribunal enclosing a statement. He asked that the Tribunal communicate with him at 10 Osprey Court, Bradford, BD8 ORE. He provided an e-mail address. This was the first occasion on which the Respondent had notified the Applicant that he was not residing at the property.

Robert Latham
Tribunal Judge

9 July 2014