

619



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

Case Reference : **MAN/00BY/LBC/2014/0023**

Property : **47 Manningham Road
Liverpool
Merseyside
L4 2UG**

Applicant : **Fee Simple Investments Ltd**

Representative : **Adcocks, Solicitors**

Respondent : **Mr G Newton**

Representative : **N/A**

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

Tribunal Members : **Judge J Holbrook
Judge L Bennett**

**Date and venue of
Hearing** : **Determined without a hearing**

Date of Decision : **19 September 2014**

DECISION

DECISION

A breach of covenant in the lease of the Property (dated 13 October 1983) has occurred by reason of the Respondent having underlet the Property without the previous written consent of the landlord.

REASONS

Background

1. On 3 July 2014 an application was made to the First-tier Tribunal (Property Chamber) under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of a covenant or condition has occurred in a lease of a property known as 47 Manningham Road, Liverpool L4 2UG (“the Property”).
2. The lease in question (“the Lease”) is dated 13 October 1983 and was made between Suburban Homes Limited (1) and Brusna Construction Company Limited (2). It was granted for a term of 999 years at an annual rent of £15.00.
3. The application was made by Fee Simple Investments Ltd, which owns the reversionary interest in the Property and is the current landlord under the Lease. The application was made on the basis of an alleged breach of a covenant not to underlet the Property without the consent of the landlord.
4. The Respondent to the application is Mr Gregory Newton, the current tenant under the Lease, whose given address is the Property.
5. On 25 July 2014 the Tribunal gave directions for the conduct of the proceedings. The parties were informed that this matter was considered suitable for a determination without an oral hearing unless either party gave notice that they wished a hearing to be listed. As no such notification was received, the Tribunal proceeded to determine the matter on the basis of the evidence provided in the application and in written submissions provided by the parties in response to directions. The Tribunal did not inspect the Property.

Law

6. A prerequisite for the forfeiture of a lease (otherwise than for a breach of a covenant to pay rent) is the service of a notice under section 146(1) of the Law of Property Act 1925. However, section 168(1) of the Commonhold and Leasehold Reform Act 2002 provides that a landlord under a long lease of a dwelling may not serve such a notice unless section 168(2) of the 2002 Act is satisfied.

7. One of the ways in which section 168(2) may be satisfied is for it to be finally determined by the Tribunal (upon an application by the landlord under section 168(4)) that a breach of a covenant or condition in the lease has occurred.

The Lease

8. Clause 5(g) of the Lease contains a tenant's covenant:

“Not to assign underlet charge or part with the possession of the said property without the previous consent in writing of the Lessor such consent not to be unreasonably withheld”

Evidence and submissions

9. The Applicant alleges that the Respondent has underlet the Property without obtaining the landlord's consent. In support of this assertion, a brief report by SBS Investigations Ltd was produced. This stated that, as of 15 September 2012, the Property was occupied by a Ms Danjelia Lungari and a Mr Daniel Swarbrick who confirmed that they were renting the Property through Northwood Letting Agency UK.
10. No submissions were received from the Respondent.

Conclusion

11. Taken at face value, the evidence produced by the Applicant supports the assertion that there has been a breach of a covenant in the Lease, as described above. It is not known whether the Property is still sublet but, as the Applicant points out, that is not a matter which is relevant to the question of whether a breach of covenant has occurred.
12. In the absence of any evidence from the Respondent to rebut the case made by the Applicant, the Applicant is entitled to a determination that a breach of covenant has occurred.