



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

**Case Reference** : **MAN/30UN/LBC/2014/0030**

**Property** : **88 Liverpool Old Road, Walmer Bridge  
PrestonPR4 5GE**

**Applicant  
Representative** : **G & O Securities Limited  
GSL Administration**

**Respondent  
Representative** : **Mr Michael John Frankland  
G H Lee & Co Solicitors**

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

**Tribunal Members** : **Laurence Bennett (Tribunal Judge)  
Jonathan Holbrook (Tribunal Judge)**

**Date of determination** : **15 December 2014**

**Date of Decision** : **22 December 2014**

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**DECISION**

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## **Summary decision**

1. The Respondent has breached a covenant in his Lease of the Property to use it as a private residence for his and his family's occupation and not to underlet.

## **Application**

2. G & O Securities Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of covenant has occurred in the Lease dated 16 July 2004 relating to 88 Liverpool Old Road, Walmer Bridge, Preston PR4 5GE (the Property).

## **Background**

3. The Applicant is the successor to the Lessor's interest created by the Lease of the Property. The Respondent is the Lessee named in the Lease.
4. The application was made on 6 October 2014.
5. Directions made 31 October 2014 by Judge Bennett included "The Tribunal considers it appropriate for the matter to be determined by way of a paper determination....." The directions gave opportunity for the parties to request a hearing. Neither party made such request.
6. The Applicant's submissions include copies of the Lease, Land Registry entries, correspondence and details of the grounds of the application specifying the breach and comments on the Respondent's submissions.
7. The Respondent has provided submissions and copy correspondence.
8. The Tribunal convened on 15 December 2014 without the parties to determine the application.

## **The Lease**

9. The Lease of the Property dated 16 July 2004 is made between Isherwood Developments Limited (1) Liverpool Old Road (Walmer Bridge) Residents Company Limited (2) and Michael John Frankland (3).
10. Paragraph 3(17) contains the Lessee's covenant to observe and perform the obligations contained in the Second Schedule. Paragraph 1 of the Second Schedule states: "To use the Demised Premises as a private residence for the occupation by the Lessee and his family and not to underlet the same."

## **Law**

11. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states: "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."

12. Section 168(2)(a) states: "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

13. Section 168(4)(a) states: "A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred."

### **Evidence and submissions**

14. The Applicant stated in the application that: "The Respondent has granted sub-leases to a third party in breach of the covenants and stipulations and quoted above." The Applicant's submissions include copy correspondence from the Respondent confirming that he has sub-let the Property with a copy of an Assured Shorthold Tenancy Agreement dated 25 February 2013 to Mr Roger Clayton.

15. The Respondent has provided a history of sub-letting the Property since September 2009; "I have continued to sub-let the Property on AST since that date." He gave reasons for the sub-letting which relate to personal circumstances and stated his belief: "I had the consent of the Landlord." He stated that he has taken steps to regain possession of the Property and to place it on the market for sale. Notice has been given to vacate by 21 January 2015.

### **Tribunal's conclusions with reasons**

Our conclusions are:

16. We note that the Lease provisions specified by the Applicant. The Respondent has provided his explanation showing his personal reasons for letting the Property but has not provided documentary or other evidence supporting his assertion that the original Lessor "confirmed to me that he would not object to me sub-letting the Property."
17. It is clear that there has been more than one sub-letting of the Property. We do not find convincing that the Respondent has sought to discharge his obligation in the Lease by an undocumented conversation. The relevant provision is an absolute prohibition on underletting and not a requirement to seek consent before doing so. If this were to be changed it would be necessary to vary the Lease. Correspondence between the parties refers to other provisions within the Lease particularly paragraph 3(10)(a)(b), we do not see how they reduce or minimise the prohibition in the Second Schedule.
18. We conclude that the Respondent has breached the covenant set out in paragraph 3(17) of the Lease.

### **Order**

19. The Respondent has breached his covenant in the Lease by sub-letting the Property.