



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

Case Reference : **BIR/00CN/LBC/2015/0006**

Property : **95 Rupert Street, Nechells, Birmingham
B7 5DS**

Applicant : **Sycamore Management (Nechells) No 1 Limited**

Representation : **Mr Mark Strangward**

Respondent : **Mohammad Dehneh**

Representation : **Mrs Susan Dehneh**

Type of Case : **For an order under section 168 (4)
Commonhold and Leasehold Reform Act
2002 ('the Act') that a breach of covenant
has occurred**

**Date and venue of
Hearing** : **30th June 2015 at City Centre House,
13th Floor, 5 - 7 Hill Street, Birmingham
B5 4UU**

Tribunal: : **Judge W J Martin
Mr C Gell F R I C S**

Date of Issue : **13th July 2015**

DECISION

Preliminary

- 1 On 12th June 2015 the Tribunal received an application ('the Application') from Sycamore Management (Nechells) No.1 Limited ('the Applicant') for an order under section 168 (4) of the Act that a breach of a covenant in the lease dated 14th July 1989 and made between Hartley Property Trust (1) The Applicant (2) Colin Cornelius Keane (3) ('the Lease') has occurred in respect of 98 Rupert Street, Nechells, Birmingham B7 5DS ('the Property'). The Respondent is Mohammad Dehneh.
- 2 Section 168 (1) of the Act provides that a landlord under a long lease 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 unless subsection (2) is satisfied. Subsection (2) provides (inter alia) that the subsection is satisfied if it has been finally determined on an application under subsection (4) that the breach has occurred.
- 3 Section 168 (4) provides:

'(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 covenant or condition has occurred'.
- 4 Section 169 (2) provides that for the purposes of section 168 it is finally determined that a breach has occurred (a) if a decision that it has occurred is not appealed against or challenged at the end of the period for doing so, or (b) if the decision is appealed against or challenged and not set aside at the end of the period for bringing any further appeal (if any).
- 5 The alleged breach of covenant relates to the covenant in Clause 3 (f) (iii) of the Lease:

'Not at any time to sub-let the whole of the demised premises without the consent of the Management Company which shall not be unreasonably withheld'.
- 6 The Application alleges that the Respondent has sub-let the Property without consent in breach of the above covenant. It also states that there are concerns about the safety of the gas and electrical installations at the Property and issues of overcrowding.
- 7 The Tribunal issued Directions for a Hearing of the Application under the 'Fast Track' procedure, because of the potential health and safety issues, and issued Directions appropriate to the case.

Submissions and Hearing

- 8 The Hearing was held at the Tribunal's Hearing rooms in Birmingham on 30th June 2015. The Applicant was represented by Mr Strangward, secretary to the Applicant, and the Respondent by Mrs Susan Dehneh. The Tribunal was informed that the Respondent resides in Jordan.
- 9 The Applicant's written submissions, forwarded with the Application are summarised as follows:

- 14 Upon being questioned by the Tribunal as to how the covenant had been breached, given that the original letting was not objected to, Mr Strangward said that he had received advice to the effect that, at the expiry of the section 21 Notice, on 1st June 2015, the original tenancy came to an end, and that the continued occupation by Ms Obsiya was under a 'non standard' tenancy agreement, and that occupation under such an agreement constituted a breach of Clause 3 (f) (iii) of the Lease.
- 15 Upon being questioned by the Tribunal as to whether Ms Obsiya continued to occupy after the initial six months fixed term of the original tenancy agreement, or whether there were in fact new tenancy agreements entered into at six monthly intervals, Mr Strangward said he did not know.
- 16 Mrs Debheh explained that she was divorced from Mr Debheh some years ago, but that they remain on reasonable terms. Mr Debheh in fact owns two of the flats in the block, and Mrs Debheh is familiar with both of them, having been on the management committee of the Applicant at one time. It had been explained to the Tribunal at the outset that the Applicant is a company owned by the leaseholders and that no separate managing agents are employed.
- 17 Mr Debheh had explained to her that he had had some family problems to deal with in Jordan, where he now lives, and had not properly attended to matters, hence the apparent delay. However, all steps have now been taken to remedy the situation.

The Decision of the Tribunal

- 18 The suggestion by Mrs Strangward that the continued occupation by Ms Obsiya after the expiry of the section 21 Notice amounts to the grant of a new tenancy for which licence to sublet had not been sought, is completely misplaced. Had the original tenancy been granted with no application for permission to sub-let, that may have constituted a breach of the covenant in Clause 3 (f) (iii) of the Lease. However, Mr Strangward's recollection was that verbal permission had been sought and given, and in any case he confirmed that there would have been no objection.
- 19 If there had been evidence that new tenancy agreements were entered into at six monthly intervals, then each tenancy granted would require a licence in accordance with clause 3 (f) (iii) of the Lease, and the grant of such a tenancy without consent would constitute a breach of the clause. However, there is no evidence that any such tenancy agreements were granted.
- 20 Accordingly, the decision of the Tribunal is that there has been no breach of the covenant by the Respondent, and that the Applicant's application under section 168 (4) of the Act fails.
- 21 If either party is dissatisfied with this decision they may apply for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be made within 28 days of this decision (Rule 52 (2) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

Judge W.J. Martin