FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AF/LBC/2015/0153**
Property	:	**2 Wheatlands, Heston, Hounslow, TW5 OSA**
Applicant	:	**Dr W. Chong (head landlord)**
Representative	:	**Mr R. Barma of counsel with Ms J. Smith, solicitor, of William Sturges LLP**
Respondent	:	**Mr J. Dhani**
Representative	:	**Not represented**
Type of Application	:	**An application under section 168 of the Commonhold and Leasehold Reform Act 2002 (the 'Act) seeking a determination that the leaseholder has committed breaches of his lease**
Tribunal Members	:	**Professor James Driscoll (Judge) and Mr Ian Holdsworth, MSc FRICS (chartered surveyor)**
Date and venue of Hearing	:	**The tribunal heard the application on 23 July, 2015. Members of the tribunal attended the premises on 10 June 2015 when they carried out an inspection. Additional documents were sent to the tribunal after the hearing.**

Date of Decision : 7 September, 2015

DECISION

Summary of the decision

1. The tribunal determines that the leaseholder has broken clause 2 of his lease by allowing for letting of the property in 2012. In addition the tribunal determines that the landlord failed to prove that the leaseholder breached the lease by not obtaining permission to carry out alterations. The tribunal also determines that the landlord failed to prove that the garden house is occupied by anyone other than the tenant of the house who has an assured shorthold tenancy. The landlord also failed to prove that the leaseholder has let rooms in the house in breach of his lease.

Introduction

2. This is an application seeking a determination that the leaseholder has broken covenants in his lease. It is made by Dr Chong ('the landlord") who has a superior lease of the premises. The application is made under section 168(4) of the Act. The respondent to the application is Mr Dhami ('the leaseholder') who has a long lease of the premises which consists of a large house ('the house'), a substantial garden and an additional smaller building ('smaller house ') located at the end of the garden. The lease was granted for a term of 999 years in 1966.

3. There is a management company called the Wheatlands Residents Limited ('Company') which manages this and other leasehold premises on the estate.

4. Thus, there is a freeholder (currently a company by the name of Cleveland Inc), a long lease of the house and a third party management company. In other words, the lease is a tripartite lease.

5. We were told at the hearing that each leaseholder is entitled to be a member of the company.

6. In all there are 203 dwellings on the estate and these are mainly houses sold on long leases of 999 years. There are also two blocks of flats where the flats are held on long leases. It appears that in some cases (perhaps all but the parties are not clear on this) that superior leases intermediate to the leases of the individual houses or flats , such as the superior lease held by the landlord in this case, have been granted.

7. We were told that there has been a history of allegations that the leaseholder has broken the terms of his lease. A consent order was made in proceedings in the Brentford County Court on 27 January 2003. Later a licence for alterations was entered into in June 2003 and the leaseholder obtained retrospective planning consent to build an out building in the rear of the garden. The company applied to this tribunal in 2014 seeking a determination that the leaseholder was in breach of the lease but on that occasion the tribunal decided that covenants could only be enforced by the landlord not the company.

8. Mr Dhami does not live in the property and he has rented it out on assured shorthold tenancies. Currently the premises are occupied by Mr and Mrs Silwinski and their family.

9. In summary, the landlord alleges that the leaseholder has carried out alterations to the premises and that he has allowed the premises to be used by several families instead of a single occupation in breach of the covenants in his lease. The landlord also alleges that the leaseholder has failed to maintain and repair the premises and that he has carried out alterations without the landlords consent. The leaseholder denies these allegations.

10. The application was dated 23 March 2015. A pre-trial review was held and directions were given on 2 April 2015.

The inspection

11. We carried out an inspection of the premises on 10 June 2015 when we were met by the leaseholder, who was accompanied by his son Mr J Dhami and his consultant architect Mr R Gujral. Mr Gibbons, a director the management company and a leaseholder of another house on the development, also attended. All present participated in the property inspection.

12. We were able to view the entire main house, we met the tenant (Mr and Mrs Silwinski and their family), we saw the extensive garden and a separate building at the rear of the garden. One room in the smaller building is kept locked and the tenancy has a key. He unlocked that room and saw that it is used as a study or work office by the tenant. We were able to inspect the interior of the main house as well as the smaller building at the rear of the garden. In addition we walked around the exterior of the building.

13. The property is a detached two storey dwelling built in the 1960's as part of a mixed residential development. The layout of the building is unusual with the bedrooms at ground floor level and living accommodation at first. The accommodation is built around an open courtyard which is accessed at ground and first floor by an open staircase.

14. Situated within the garden to the property is a substantial single storey outbuilding that offers self-contained accommodation including bathroom/wc and kitchen. There is also a disused swimming pool situated in the garden.

15. The tribunal was provided with unnumbered or dated floor plans by the landlord prior to attendance. The landlord claimed these plans represented a room layout approved and consented by the landlord in 2003. The inspection revealed some differences between the layout described by the plans and the built property. The principal modifications were as follows: the construction of stud partition walls to enclosed previous open spaces at ground floor; the construction of several flights of steps within hallways at ground floor to accommodate changes in level; the closure of some door openings, again at ground level; and, the provision of an upper flight of stairs in the courtyard leading to the roof space. Other changes may have been made but these were not evident at inspection.

The hearing

16. At the directions stage the tribunal considered that the application could be dealt with an inspection followed by the tribunal considering the matter on the basis of the documents supplied by the parties. However, having read the documents before the inspection the tribunal decided that a hearing was necessary in order that oral evidence could be given by both sides.

17. A hearing was therefore arranged and it took place at the tribunal on 23 July 2015. Mr Barma of counsel and his instructing solicitor Ms Smith of William Sturges LLP appeared on behalf of the landlord. They were accompanied by Mr Gibbons of Wheatlands.

18. Each of the parties sent a bundle of documents to the tribunal. The landlord's solicitors prepared his bundle which contains a copy of the application, the directions, a copy of the lease, a statement on behalf of the landlord and a statement made by the landlord's solicitor, Ms Smith. This bundle extends to 61 pages.

19. The leaseholder prepared a bundle containing his statement of case, various witness statements and copies of correspondence between Wheatlands and the leaseholder and the local planning authority and other items. He also handed a further statement at the hearing. His documents extends to in excess of 220 pages.

20. Counsel for the landlord addressed us on the allegations and Mr Gibbons also addressed us. No other witnesses were called by the landlord

(who did not attend the hearing). The leaseholder addressed us but he did not call any witnesses.

21. After the hearing we were sent a copy of the tenancy agreement between the leaseholder and his current tenant. The landlord's solicitor also sent Land Registry office copies relating to the premises and they confirmed that they were instructed by Dr Chong, the head landlord.

22. At the hearing Mr Gibbons gave evidence and counsel also sought to rely on the statement of his instructing solicitor. The leaseholder gave evidence but he did not call any witnesses. In the landlords bundle were included a statement of case 'on behalf of the applicant' which was signed by his solicitors and a statement by Ms Smith his solicitor. Dr Chong, the landlord did not attend the hearing and he did not file a signed statement. Ms Smith did not give evidence.

23. The landlord alleges that the leaseholder has broken a number of the covenants he entered into in the lease. As the parties agree that there are such terms (though the leaseholder denies, for the most part, breaking them) and we were provided with a copy of the lease, it is unnecessary to set out extracts from the covenant in full. At the hearing we were told that the landlord was no longer pursuing the allegation of disrepair.

Reasons for our decision

24. Our task under section 168 of the Act is to decide whether a leaseholder has broken a term or a covenant in the lease. We are not concerned whether the landlord has waived any breach. The onus of proving that the leaseholder has broken a term lies with the landlord who has made the application. In this case the superior landlord clearly has this task. Applications under this measure are usually brought with a view to subsequently bringing court proceedings seeking forfeiture of the lease.

25. The landlord in this case has a superior lease just 10 days longer than the leaseholder's term. Forfeiture of a lease of a large house with an extensive garden and a separate house in the garden would involve forfeiting the remainder of the term which currently has some 950 years unexpired.

Unlawful use

26. As to the use of the smaller building the landlord relies substantially on the evidence given on his behalf by Mr Gibbon. We are asked to draw inferences from what he says and on our own observations when we carried out our inspection. Similarly we have this evidence to consider for the more general allegation of people occupying the house.

27. The landlord has no information to offer on who he thinks is occupying the property (other than the current tenants). No names or descriptions have been made available. According to the leaseholder the only current occupiers are Mr and Mrs Silwinski and members of their family. After the hearing the leaseholder sent us a copy of an assured shorthold tenancy agreement he had entered into with the family.

28. Our inspection of the premises reveals that the smaller building is a self-contained building. One of the rooms is kept locked by Mr Silwinski who uses it as an office. The building is centrally heated and the heating was on when we inspected the building. It is clearly capable of being occupied but there was no visible evidence of anyone occupying except for the tenant and his family. As we pointed out during the hearing it seems to be the case that the leaseholder could have let the smaller building at a market rent (though this would amount to a breach of covenant without the consent of the landlord).

29. We saw no evidence of multiple occupation. In support of this allegation the landlord alleged that there are locks on individual rooms in the house. However, we did not see any such locks during our inspection

30. Weighing up the evidence, however, we conclude that the landlord failed to establish on the balance of probabilities that the leaseholder was in breach of covenant by letting this smaller building without consent or the covenant only to allow occupation by a family.

31. As to allegation of unlawfully subletting the main house, the leaseholder admitted at the hearing that for short period he was letting and that he had engaged letting agents for this purpose. We therefore determine that in light of this admission that the leaseholder has broken clause 2 of his lease.

Alterations

32. Turning to the allegation that alterations have been carried out without the landlord's consent we refer again to our inspection of the property (see paragraphs 11 to 15 above). On the basis of our detailed inspection we have concluded that the landlord failed to prove specific examples of alterations that were carried out in breach of covenant.

Summary of our determinations

33. We determine that the leaseholder was in breach of the covenants relating to subletting the house in 2012.

34. We also determine that the landlord has failed to prove the other breaches he complains of.

James Driscoll and Ian Holdsworth
7 September, 2015

Appendix

Section 168, Commonhold and Leasehold Reform Act 2002

No forfeiture notice before determination of breach

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

(5)
But a landlord may not make an application under subsection (4) in respect of a matter which—

(a)
has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(b)
has been the subject of determination by a court, or

(c)
has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

Section 168: supplementary

(1)
An agreement by a tenant under a long lease of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a)
in a particular manner, or
(b)
on particular evidence,
of any question which may be the subject of an application under section 168(4).
(2)
For the purposes of section 168 it is finally determined that a breach of a covenant or condition in a lease has occurred—
(a)
if a decision that it has occurred is not appealed against or otherwise challenged, at the end of the period for bringing an appeal or other challenge, or
(b)
if such a decision is appealed against or otherwise challenged and not set aside in consequence of the appeal or other challenge, at the time specified in subsection (3).
(3)
The time referred to in subsection (2)(b) is the time when the appeal or other challenge is disposed of—
(a)
by the determination of the appeal or other challenge and the expiry of the time for bringing a subsequent appeal (if any), or
(b)
by its being abandoned or otherwise ceasing to have effect.
(4)
In section 168 and this section "long lease of a dwelling" does not include—
(a)
a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (c. 56) (business tenancies) applies,
(b)
a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 (c. 5) in relation to which that Act applies, or
(c)
a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (c. 8).
(5)
In section 168 and this section—
"arbitration agreement" and "arbitral tribunal" have the same meaning as in Part 1 of the Arbitration Act 1996 (c. 23) and "post-dispute arbitration agreement", in relation to any breach (or alleged breach), means an arbitration agreement made after the breach has occurred (or is alleged to have occurred),
"dwelling" has the same meaning as in the 1985 Act,
"landlord" and "tenant" have the same meaning as in Chapter 1 of this Part, and
"long lease" has the meaning given by sections 76 and 77 of this Act, except that a shared ownership lease is a long lease whatever the tenant's total share.
(6)
Section 146(7) of the Law of Property Act 1925 (c. 20) applies for the purposes of section 168 and this section.

(7)
Nothing in section 168 affects the service of a notice under section 146(1) of the Law of Property Act 1925 in respect of a failure to pay—
(a)
a service charge (within the meaning of section 18(1) of the 1985 Act), or
(b)
an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).