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

Case Reference : LON/00BK/LBC/2015/0034

Property : 7 Raynham, Norfolk Crescent,
London W2 2PG

Applicant : Raynham Property Company
Limited

Representative : Dale & Dale Solicitors Limited

Respondent : Derby Trading and Investments
Limited

Representative : Ashfords LLP

Type of Application : Determination of an alleged breach
of covenant

Tribunal Members : Judge Dickie
Mr P Casey, MRICS

DECISION

SUMMARY

The Respondent has breached the covenants in Clause 4 and Paragraph 4(b) of the Fifth Schedule of the Lease.

REASONS

1. The applicant freeholder seeks a determination, under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act"), that the respondent leaseholder is in breach of covenants contained in the lease.
2. The Applicant is the registered freeholder of premises registered under title NGL842247 known as Raynham Norfolk Crescent, 1 to 8 Cambridge Square, 12 to 20 Oxford Square and Raynham Garden, Hyde Park Crescent, London. The subject premises are a self contained

four bedroomed flat within a purpose built block of 77 flats and registered as title NGL874065.

3. The lease 13 October 2006 is for a term of 999 years from 22 October 2004. In Clause 4 the Lessor "covenants with the Lessee as set forth in the Fifth Schedule"
4. The Lessee thereby covenants in Paragraphs 4(a) and 4(b) of the Fifth Schedule:

"(a) Not assign underlet or part with possession or occupation of part of the Demises Premises for all or any part of the said term nor share possession or occupation of the Demised premises or any part thereof nor underlet the whole of the Demised Premises for a term of less than six months.

(b) Not (but without prejudice to the other provisions in this Lease contained) assign underlet or part with possession or occupation of the whole of the Demised Premises without the written consent of the Lessor first obtained such consent not to be unreasonably withheld"

5. The Applicant asserted in the application that the Respondent has breached these covenants in that it has:
 1. sublet the premises for less than six months; and
 2. sublet the premises without having first obtained the Lessor's written consent.
6. The Respondent admits in these proceedings that it is in breach of Paragraph 4(b) of the Lease, in that between the period 15 October 2012 to 8 January 2015 it sublet the property to Four Seasons Property Limited on tenancy agreements which were renewed on a yearly basis. None of these tenancies is produced in evidence. The most recent tenancy agreement to Four Seasons Property Limited is said to have been dated 16 October 2015, though it is assumed this should have read 2014, since it is asserted that the lease was disclaimed on 8 January 2015 as Four Seasons Property Limited had gone into liquidation.
7. The Respondent further asserts that the subject premises are now let to Grosvenor Property Investments London Limited, pursuant to a tenancy agreement dated 16 January 2015 for a period of 6 months.
8. Whilst none of the tenancy agreements is disclosed, the Applicant in its Response to the Respondent's Statement of Case accepts that these are tenancy agreements of greater than 6 months.
9. The Respondent admits that these sub-lettings were made without the Applicant's consent. It denies however that it has been in breach of paragraph 4(a) of the Lease, as the sub-tenancies it granted were for periods of more than 6 months. However, the Respondent confirms it is aware that Four Seasons Property Limited rented out the subject

premises for short-term lets. It is not clear the date on which it became so aware

10. The Applicant has produced a form which it claims was completed on 23 February 2015 in front of the porter stating that the letting agent's details were Four Seasons. However, the Respondent states that Four Seasons Property Limited no longer had a tenancy agreement for the subject premises as of that date.
11. The Applicant argues in its Response that the Respondent had parted with possession of the subject premises with knowledge that they would be further sub-let for a period of less than 6 months, and that the Respondents have allowed their sub-tenant to let the premises in breach of Paragraph 4(a) of the Fifth Schedule to the Lease.
12. However, the covenant in question must be strictly interpreted. It is a covenant not to "underlet the whole of the Demised Premises for a term of less than six months". The covenant is not against allowing to be underlet for such a period. The tribunal is not persuaded there has been a breach by the Respondent of Clause 4(a).
13. Clearly the landlord is concerned at the situation which has apparently arisen, in that the premises are being used for short term "holiday" lettings to which it would doubtless not consent. Such a prohibition would be imposed by the landlord in the grant of consent to subletting if it had been requested. Subletting in breach of the terms of the landlord's consent would be a further breach of Paragraph 4(b).

Name: F Dickie

Date: 20 May 2015