



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

Case Reference : **LON/OOBK/LBC/2016/0068**

Property : **Flat 61 Dorset House, Gloucester
Place, London NW1 5AE**

Applicant : **Dorset House Residential Limited**

Representative : **Dale & Dale Solicitors**

Respondent : **Mr D.H Connors**

Representative : **None**

Type of Application : **For the determination of an alleged
breach of covenant**

Tribunal Members : **Judge S O'Sullivan
Mrs J Hawkins**

**Date and venue of
Hearing** : **3 October 2016 at 10 Alfred Place,
London WC1E 7LR**

Date of Decision : **3 October 2016**

DECISION

Decision of the tribunal

The Tribunal determines pursuant to section 168(4) of the Commonhold and Leasehold Act 2002 that the Respondent has breached the various covenants of the lease as set out in the statement of Mr Timothy Burr dated 21 July 2016 for the Applicant and as set out below.

The application

1. The Applicant seeks a determination pursuant to s. 168(4) of the Commonhold and Leasehold Reform Act 2002 that the Respondent tenant is in breach of various covenants contained in the lease.
2. The property which is the subject of this application is known as Flat 61 Dorset House, Gloucester Place, London NW1 5AE (the "Property").
3. Directions were made dated 22 August 2016 which set out the steps to be taken by the parties and provided for this matter to be considered at an oral hearing.
4. In accordance with those directions the Applicant lodged a bundle of documents.

The hearing

5. A hearing took place on 3 October 2016. The Applicant was represented by Mr Comport of Dale & Dale Solicitors. He was accompanied by Mr Burr of Parkgate Aspen who had made a witness statement on behalf of the Applicant. The Respondent did not appear and was not represented.

The Applicant's case

6. The Applicant relied on a bundle of documents and the witness statement of Mr Burr dated 21 July 2016.
7. In this statement it was confirmed that Mr Burr is a director of Parkgate Aspen, the managing agents of the block in which the Property is situate. The Property is contained in the building known as Dorset House which contains 200 flats. The Respondent is the leasehold owner of the Property pursuant to a lease dated 21 January 1977 and made between Buckingham Properties Limited as lessor and Maria Magdalena Weissman as lessee (the "Lease").

8. The relevant clauses of the Lease said to have been breached are as follows;

Clause 2(15) of the Third Schedule 1 the Respondent covenants;

“Not to use the flat nor permit the same to be used for any purpose whatsoever other than as a self contained private residential flat in the occupation of one family or household only”.

9. The Applicant relies on a number of forms attached to Mr Burr’s witness statement. We heard that any persons entering the premises are asked by the porters to complete a short registration form. These detail the number of nights staying, the names and details of the occupiers and the type of tenancy. These forms state the tenancy to be variously *“Air BNB/D Collection (a lettings agency) /Online”* and the duration varies from 2 to 4 nights. In relation to whether this use constitutes a breach of clause 2(15) of the Third Schedule the Applicant relies on the Court of Appeal case of *Caradon District Council v Paton and Another [2000] EGLR 57* in which it was held that the a person on holiday would not describe the flat as his or her home and further that *“what is required in order to amount to the use of a property as a home is a degree of permanence together with the intention that this should be a home..but not the purposes of a holiday”*. The Applicant submits that someone using the Property on a short term let of the nature in question would not consider it as a residential flat but that it rather akin to a hotel with apartments for holiday lets. In order to satisfy residence there has to be a degree of permanence.
10. The tribunal also heard that the short term lets in the block caused a great deal of wear and tear putting the services in the block under pressure and the resident lessees disturbed by constant coming and goings.
11. Pursuant to clause 2(14) (iii) of the Lease where the lessee sublets the flat then the lessee should ensure that the sub lessee enters into a Deed of Covenant. The Applicant says that the lessee has not provided any such Deed of Covenant.
12. Further to clause 2(14)(v) of the Lease the Respondent covenanted to give notice in writing on every assignment and to pay a registration fee as follows;

“Upon every assignment transfer underlease mortgage charge or other documents affecting this lease to give to the Lessor within 1 month thereafter notice in writing thereof and also if required by the Lessor to produce each such document to the lessor’s solicitors and pay a fee of Eight Pounds for the registration of such notice or document”.

13. The Applicant says that it is a matter of fact that no such notice was given.

14. Pursuant to clause 2(2)(5) of the Lease and Paragraph 3 of the Third Schedule the Respondent covenants;

“Not to do or permit to be done any act or thing which may render void or voidable any policy of insurance on any flat or in any part of the Building or may cause an increased premium to be payable in respect thereof”.

15. The Applicant says that it has been informed by its insurers that the buildings insurance is voidable if a claim was made and there has been a subletting by way of a short let. The Applicant must advise its insurers when it becomes aware that a flat has been let on short let and keep the brokers informed on the progress of the action being taken to remedy the breaches.

The Respondent’s case

16. The Respondent has not filed any statement of case or written to the tribunal to set out if and/or why the application was opposed.

The Law

17. Section 168(4) provides that;

“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 covenant or condition in the lease has occurred.”

The Tribunal’s decision

18. The tribunal accepted the evidence of the Applicant and the numerous and extensive breaches as set out above and in detail in the statement of Mr Burr.

19. We accept that the Property has been sublet on numerous short term lets since May of this year on the basis of the various registration forms produced to us. We accept the Applicant’s submissions that such short term lets are a breach of clause 2(5) as referred to above. We agree that for a home to be used as a self contained private residential flat there must be an aspect of some permanence to the occupation which is not satisfied by short lettings through Air BNB and similar online lettings sites.

20. It is a matter of fact that the Respondent has not given notice of the various assignments nor has he ensured that the various sub lessees enter into a Deed of Covenant as required.
21. We also accept that by granting various short term lets the Respondent has rendered the building insurance potentially voidable in breach of clause 2(2) (5).
22. Accordingly it finds that the Respondent is accordingly in breach of the provisions of the Lease set out above.

Name: S O'Sullivan

Date: 3 October 2016