



Case Reference : CHI/00HMN/LBC/2017/0028 and 0029

Property : 25 and 38 Westcliff Studios,
11 Durley Gardens,
Bournemouth BN2 5HU

Applicant : Tyrell Investments Inc

Representative : Ian Newbery & Co, solicitors

Respondent : Mrs Gwen Bennett-Curtis

Representative : Jacobs & Reeves, solicitors

Type of Application : Alleged breach of covenant

Tribunal Members : Judge D. Agnew

Date and venue of Hearing :

Date of Decision : Paper determination on 22nd August 2017

DECISION

Background

1. On 18th April 2017 the Applicant applied to the Tribunal under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that the Respondent has breached certain covenants of the lease of her two flats of which she is the long lessee at 25 and 38 Westcliff Studios, 11 Durley gardens, Bournemouth BN12 5HU (“the Properties”). It was alleged that the Respondent had let out the Properties on short term holiday lets in breach of paragraph 1 of the First Schedule to the leases. This provides that the Lessee agrees “Not to use the Flat nor permit the same to be used for any purpose whatsoever other than as a private dwelling in the occupation of one family only nor for the purpose from which a nuisance can arise to the owners lessees and occupiers of other flats comprised in the Mansion or in the neighbourhood nor for any illegal or immoral purpose.”
2. Directions were issued on 23rd May 2017 which provided for the application to be determined by way of a paper determination without an oral hearing unless either party objected within 28 days. Neither party did object.

The Applicant’s case

3. The Applicant produced Official Copies of both the Applicant’s and respondent’s titles as registered at the Land Registry together with a copy of the two leases. It also produced a copy of advertisements listing the Properties as available for holiday lets. Further, the Applicant produced a witness statement from Dr Astrid Mangel who is the lessee of 26 Westcliff Studios. This evidenced that the two subject flats were regularly let out on holiday lets for no more than a few days at a time. This occurred from the Spring/Summer of 2016. Following a complaint made by Dr Mangel to the managing agents the lettings appeared to cease for a while but then started up again. On one occasion a couple with a suitcase complained to Dr Mangel that they had rented Flat 38 for the weekend but could not get hold of the keys.
4. The Applicant produced copies of email correspondence between the Applicant’s solicitors and solicitors for the Respondent and between the Respondent’s solicitors and the Respondent’s letting agents. The Applicant’s solicitors said that this showed that the parties had “effectively agreed matters” and that the Respondent “accepts that she is in breach of her lease and has undertaken to remedy the breach and to pay agreed costs”

The Respondent's case

5. The Respondent submitted a witness statement saying that in June 2016 she entered into a Management Agreement with Fedor Properties Limited. She exhibited the said agreement. In it she agreed to appoint Fedor Properties Limited to manage her two flats. This included the ability to let them out on Assured Shorthold Tenancy Agreements or Licences by multiple occupation (up to a maximum of two persons) or obtain rental income by any other means including corporate lets and holiday lets. She says in her statement that she understands that there are covenants in her leases which restrict the flats from being sub-let on short leases or holiday lets and that they can only be used as private dwellings. She says that on 21st April 2017 she wrote to Fedor Properties Limited instructing them not to let out the Properties on holiday lets for the remainder of the term of the contractual agreement with them.
6. In an email from the Respondent's solicitors to the Applicant's solicitors the former stated that they had received confirmation from Fedor Properties Limited's solicitors that no bookings were being taken and that the flats had not been let on holiday lets since 1st May 2017 and that they were currently unoccupied. The Respondent's solicitors also agreed that the Respondent would pay the Applicant's costs.

The Tribunal's determination

7. Section 168(4) of the Commonhold and Leasehold reform Act 2002 simply allows a landlord to apply to the Tribunal for a determination that a breach of a lessee's lease has occurred. Whilst neither the Respondent's statement nor the correspondence from her solicitors contains an admission in terms that she accepts that she has breached the lease this can be inferred. She has instructed her managing agents henceforth not to let the Properties for holiday lets, those agents have acknowledged that they have not taken bookings since 1st May 2017 and the Respondent has agreed to pay the Applicant's costs. The Tribunal has also had regard to the evidence of Dr Mangel. In all these circumstances the Tribunal has no hesitation in finding that a breach of covenant by the Respondent has occurred not to use the flats or allow them to be used other than as a private dwelling in the occupation of one family only.
8. The Respondent has agreed to pay the Applicant's costs in an agreed sum. This is a private contract between the parties and is not within the Tribunal's jurisdiction to order but is something that can be enforced through the County Court if not adhered to.

Dated the 22nd August 2017
Judge D. Agnew

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.