FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAN/LBC/2017/0030**
Property	:	**Second and Third Floor Flat, 7 Margravine Road, London W6 8LS**
Applicants	:	**Cormorant Limited**
Representative	:	**Mr George Ide LLP**
Respondents	:	**Dr Aditya Surendra Raja**
Representative	:	**Keeble Hawson LLP**
Type of Application	:	**Declaration as to breach of covenant – section 168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal Members	:	**Mr Ian B Holdsworth FRICS ACIArb**
Date and venue of Paper Determination	:	**17 July 2017 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**19 July 2017**

DECISION

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1. The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, a breach of the lease has occurred in that the Respondents have sublet the premises to a group of persons that do not constitute one family or household.

The Application

1. By an application issued on 2 March 2017, the Applicants seek a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that the Respondent's tenants are in breach of their lease in respect of Top Floor Flat, 7 Margravine Road, London W6 8LS ("the property") in that they have allowed use of the premises in breach of clause 2(6) of the lease which by reference to paragraph 1 of the Third Schedule thereof prohibits the use of the property as anything other than "a self-contained private residential flat in the occupancy of one family or household only."

2. On 8 March 2017, the Tribunal gave Directions:

   (i) The Respondents' Statement of C is at A13 of the Bundle.

   (ii) The Applicants' Statement of Case is at page A11.

   (iii) The Applicants' Supplemental Statement is at page A38.

   There are also Witness Statements provided by Mr Christopher Case of Hampton Wick Estates Limited, Managing Agents for Cormorant Limited, and the Respondent, Dr Aditya Surendra Raja.

3. The parties were offered the opportunity for an oral hearing. The parties decided the matter could be determined on written submissions.

The Law

4. Section 168 of the Act provides as follows:

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

5. This Tribunal is asked to determine whether the Respondents have breached a term of their lease. It is not for this Tribunal to consider whether another Court might grant relief from forfeiture.

The Lease

6. The lease is dated 15 December 1987 (at A18). The tenant covenants:

"2(6) to observe the restrictions specified in the Third Schedule hereto."

At the Third Schedule it states:

"1. Not to use the flat or permit the same to be used for any purpose whatsoever other than as a self-contained private residential flat in the occupancy of one family or household only."

Tribunal Determination

(i) Use of premises as bedsits

7. It is common ground that the Respondents has sublet the property to five students.

8. The Tribunal is told these five sub-tenants have jointly and severally taken an assured shorthold tenancy agreement dated 22 August 2015 following an assignment of the tenancy agreement dated 16 June 2015.

9. There is witness evidence from Mr Christopher Case that the premises are converted to five separate bedsits. This is contradicted by the evidence submitted by Dr Raja. In his witness evidence, he points out that the alignment of the five bedsits matches the original layout of the property shown on the lease plan (E9-E11). He states that the five rooms are not bedsits but bedrooms, each occupied by a different subtenant.

10. No photographic evidence is submitted to the Tribunal to confirm that the rooms are converted to self-contained use or bedsits. The plan relied upon by both parties, prepared by a subtenant to show damp locations and

exhibited at E4 shows the same wall alignment as the lease plan. Tribunal accepts the dividing walls between this accommodation remain unchanged.

11. The Tribunal is presented with insufficient evidence to confirm that any of the rooms are converted to bedsits.

(ii) <u>One family or household only</u>

12. The Tribunal is asked to judge whether the current group of five subtenants at this property constitute "one family or household only."

13. The Applicant and Respondent acknowledge that the subtenants are not a family but five students who share the premises.

14. The Applicant has submitted a definition of a household which was used by the Department for Communities and Local Government(DCLG). It was first published in November 2012. The definition is that a household is:

"One person or a group of people who have the accommodation as their only or main residence and (for a group) either share at least one meal a day" or,

"Share the living accommodation, that is the living room or sitting room."

15. The Respondent argues that it is a question of "fact and degree whether" the occupants are a single household. He emphasises their several and joint liability for the tenancy, joint attendance at a performing arts school, sharing of kitchen and bathroom facilities and joint participation in a common lifestyle. He argues this by extension is " family life".

16. The photographs submitted by the Applicant (at Annex B of the Supplemental Statement Case (pages A49 – A51) show the size of the kitchen. The photographs reveal that it is small and unlikely to be of a sufficient space for five persons to sit together at any one time.

17. The drawing submitted with the written Statement prepared by Mr Case (page E4) shows the current use of the property. It shows five bedrooms. There is no lounge or living room shown on this sketch plan dated 15 February 2016. The Tribunal must deduce that with the present layout and use of the property, there is no facility for a communal daily meal and living accommodation. Many dwellings have sitting/dining rooms so both these functions could be carried out in a single area but no area exists at this property.

18. The Tribunal prefers the definition of a household used by the Department for Communities and Local Government (DCLG). This requires a facility for communal dining or living space. The current use of the property is such

that there is no living space. This space is converted into a further bedroom and there is no space within the kitchen where the group could realistically share together at least one meal per day as required by the DCLG definition of a household.

19. Under the current layout and use of the accommodation at the property the DCLG house definition cannot not be satisfied. The five residents therefore do not constitute a household and the lease is breached.

Discretion

20. The Tribunal are satisfied that this is a breach of the covenant and that it should make a determination in this matter. The likely consequence of our findings is that the landlords will require the tenant to modify the subletting to ensure appropriate accommodation is available for daily communal meals and/or shared living at the property.

Ian B Holdsworth

Valuer Chairman

19 July 2017

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.