



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

**Case Reference** : **LON/00BE/LBC/2016/0118**

**Property** : **Flat 2, 171 Tower Bridge Road,  
London SE1 2AW**

**Applicant** : **Assethold Limited**

**Respondent** : **Ms Helen Garry**

**Type of Application** : **Application for determination  
under section 168(4) Commonhold  
and Leasehold Reform Act 2002  
(breach of covenant in lease)**

**Tribunal Member** : **Judge P Korn**

**Date of Decision** : **6<sup>th</sup> March 2017**

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**DECISION**

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## **Decision of the Tribunal**

- (1) The Tribunal determines that, on the basis of the evidence provided, breaches of covenant under the Respondent's lease have occurred.
- (2) More specifically, the Respondent has admitted a breach of clause 2.11 of her lease. In addition, for the reasons given below, the Respondent is in breach of the covenants contained in clause 2.4 of her lease and a combination of clause 3.4 and the preamble to the Seventh Schedule. The Applicant has not demonstrated to our satisfaction that the Respondent is in breach of any of the covenants contained in clause 3.3.1 of her lease.

## **The application**

1. The Applicant seeks a determination pursuant to section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("**the 2002 Act**") that breaches of covenant have occurred under the Respondent's lease.
2. The Respondent is the leaseholder of the Property and the Applicant is her landlord. The Respondent's lease ("**the Lease**") is dated 23<sup>rd</sup> October 2006 and was originally made between Kessian Properties Limited (1) and Frank Bishop (2).
3. In its application the Applicant states that it has evidence that the Property has been used for short term lettings as Air 'Bnb' rentals and states that this is in breach of clause 2.4 of the Lease. In addition, in breach of clause 2.11 of the Lease no notice of these lettings has been given to the landlord. Furthermore, the lettings have resulted in nuisance, annoyance and inconvenience to other occupiers of the building in breach of (a) clause 3.3.1 and (b) a combination of clause 3.4 and the preamble to the Seventh Schedule.
4. In its application the Applicant stated that it would be content with a paper determination, and in its directions the Tribunal stated that the case would be dealt with on the papers alone unless either party requested a hearing. Neither party has requested a hearing and therefore the determination is made on the papers alone.

## **Details of covenants relied on by Applicant**

### 5. Clause 2.4

"Not to use or permit the use of the Demised Premises or any part thereof otherwise than as a single private dwelling in the occupation of one family only ...".

#### Clause 2.11

“Within one month after every ... underletting ...to give notice thereof with full particulars to the Landlord or to its solicitors and to pay a reasonable registration fee of not less than Thirty Five Pounds (£35.00) plus VAT for each such dealing”.

#### Clause 3.3.1

“Not to use or permit the use of the Demised Premises or any part thereof ... in any manner which may be or become a nuisance or annoyance to the Landlord or to the tenant or occupier of any other part of the Block or any other neighbouring property”.

#### Clause 3.4

“To observe and comply with and to ensure that all persons for the time being occupying all or any part of the Demised Premises observe and comply with the regulations set out in the Seventh Schedule hereto ...”.

#### Preamble to Seventh Schedule

“Nothing shall be done in the Demised Premises to cause inconvenience to the Landlord or to other occupiers of the Block or to prejudice the character and value of the Block as a building of high class units ...”.

### **Respondent's position**

6. The Respondent has set out her position in response to the application. In relation to clause 2.4 of the Lease, she does not admit the breach and states that she has not at any stage used or permitted the use of the Property otherwise than as a single private dwelling in the occupation of one family. In support of her position she has provided a copy of a tenancy agreement by way of confirmation that the Property has been let to a single tenant since November 2015 and has also provided a copy of a current utility bill.
7. In relation to clause 2.11, the Respondent admits the breach and accepts that she should have registered the tenancy agreement with the Applicant. She states that she was unaware of the registration requirement.
8. In relation to clause 3.3.1, the Respondent does not admit the breach. She states again that the Property has been let to a single tenant. She adds that the tenancy agreement contains provisions protecting against the use of the Property in a manner which could cause nuisance or

annoyance to others and that she has not used the Property or permitted it to be used in a manner which would be in breach of this covenant.

9. In relation to clause 3.4 and the preamble to the Seventh Schedule, again the Respondent does not admit the breach. She states that in 2016 while on long term sick leave she discovered that the Property “may have been advertised for short term rentals against my knowledge or permission by a new letting agent”. As soon as she had recovered sufficiently to deal with the matter she contacted the letting agent and terminated the marketing agreement with that agent. She states that Liminac BV has been the sole occupier for the duration of the period in question and that the Property has never been rented out on short term lets.

### **Applicant’s response**

10. The Applicant’s case consists of the application, a copy of the Lease, office copy title entries, a statement of case, witness statements and copies of relevant case law.

### **Mr Arjun Lakhani’s evidence**

11. There is a witness statement from Mr Arjun Lakhani, who states that he has occupied Flat 3 since January 2013. He states that the Property has been used for short term lets for at least 24 months and refers to a warning issued by the previous managing agent, Mr Jeremy Fisher, that certain flats including the Property were operating short term lets outside the terms of their leases. He states that several groups of tourists arrive almost every week and stay at the Property (Flat 2) almost every week and stay only a few days. Flat 2 is located on the same floor as Flat 3, and he has personally witnessed these visitors almost every week. He believes that professional cleaners are used to clean the Property between each set of guests. His father has found documentation in the building left by the cleaners which confirms that London Bridge Apartments (or just Bridge Apartments) is the company managing the lettings.
12. On the weekend of 18<sup>th</sup> to 19<sup>th</sup> February 2017 his neighbour at Flat 4 said that she had witnessed a family moving into the Property with luggage. She spoke to them and they confirmed that they had booked the flat via Expedia.com. Mr Lakhani then searched the Expedia website, discovered that London Bridge Apartments advertise on Expedia.com and saw photographs clearly advertising flats in 171 Tower Bridge Road. Copy photographs are exhibited to his witness statement.
13. After seeing the photographs Mr Lakhani telephoned Expedia on 28<sup>th</sup> February 2017, posing as a customer, enquiring as to availability for

three nights in May and was told that the Property (Flat 2) was available. A copy of his electronic reservation is also exhibited. In addition he believes that he has found the Property advertised on a website called 'apartmentsaapart.com'. Mr Lakhani adds that the nature of the short term lets has caused noise issues because of the size of the groups (he has sometimes seen groups as large as 6-7 people). There is also increased garbage, and he is concerned about the security risks of such a wide range of persons accessing the building. He considers that the character of the building has suffered and that it now resembles a cheap hotel rather than a residential home.

#### Mr Atulkumar Lakhani's evidence

14. There is also a witness statement from Mr Atulkumar Lakhani, who states that he has been the leasehold owner of Flat 3 since November 2012. He states that he that visits the building at least once every 4 to 6 weeks and that he has seen different people leaving the Property (Flat 2) on multiple occasions with luggage. Once the guests leave he often sees cleaners in attendance. Exhibited to his witness statement is a copy of an instruction sheet left by a cleaner containing information to guests about the flat and the surrounding amenities.
15. On 26<sup>th</sup> February 2017 he spoke to the occupier of Flat 4 who was told by people leaving the Property (Flat 2) that they had booked the use of the Property via Expedia. On 2<sup>nd</sup> December 2016 he saw a group of people leaving the Property with their luggage and a cleaner going in.

#### Mrs Anila Bhagdev's evidence

16. There is also a witness statement from Mrs Anila Bhagdev, who states that she has been the leasehold owner of Flat 4 for about 6 years and that she visits the building about once every 3 months. She states that she is aware that the consensus in the building is that the Property (Flat 2) is being let on short lets and that on 26<sup>th</sup> February 2017 she saw a family of four people with bags coming down the stairwell from the Property. They confirmed to her that they had booked the Property via Expedia.

#### Mr Ronni Gurvits' evidence

17. There is also a witness statement from Mr Ronni Gurvits, who is employed by Eagerstates Limited, the managing agents for the building. He refers in his statement to complaints received from occupiers of various flats in the building about the effect of certain flats – including the Property – being let out on short term lets. He notes that the Applicant's solicitors wrote to the Respondent on 5<sup>th</sup> December 2016 regarding these complaints.

## Case law

18. The Applicant has referred the Tribunal to the cases of *Caradon District Council v Paton (2000) 3 EGLR 57*, *Tendler v Sproule (1947) 1 All ER 193* and *Nemcova v Fairfield's Rent Limited (2016) UKUT 0303 (LC)*.

## **The statutory provisions**

19. The relevant parts of section 168 of the 2002 Act provide 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 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.*

*(4) A landlord under a long lease of a dwelling may make an application to a tribunal for a determination that a breach of a covenant or condition in the lease has occurred.”*

## **Tribunal’s analysis**

### Factual position

20. The first issue is a factual one. The Applicant contends that the Respondent has been using the Property for a series of short term lets, whilst the Respondent denies that this is the case.
21. On the basis of the evidence provided, I prefer the evidence of the Applicant on this issue. There is a detailed and credible witness statement from Mr Arjun Lakhani, the occupier of Flat 3, on these issues, together with credible supporting evidence from (i) Mr Atulkumar Lakhani, the leasehold owner of Flat 3, (ii) Mrs Anila Bhagdev, the leasehold owner of Flat 4 and (iii) Mr Ronni Gurvits, the managing agent. In my view, the eye witness accounts and the documentary evidence provided strongly indicate that there has been a series of short term lets at the Property.

22. The Respondent denies that there have been any short term lets but her evidence is weak. She has provided no evidence to rebut the witness evidence relied on by the Applicant, has not sought a hearing at which she could have cross-examined the Applicant's witnesses and has not obtained a witness statement from the person or people who she claims has/have been the sole occupier(s) since November 2015. In addition, the Tenancy Agreement supplied by her in evidence is undated and the named tenant, Liminac BV, looks more like a commercial organisation than a private individual or family, reducing further the likelihood that this was a letting as a single private dwelling. The existence of a utility bill addressed to Liminac BV is not inconsistent with the existence of short term lets, especially if those short term lets are being organised through Liminac BV.
23. I note that the Respondent has provided some evidence indicating that at certain points she has suffered from ill health, but she has not shown that any such ill health is relevant to the question of whether short term lets have taken place.
24. In conclusion, on this point, I am satisfied that the Property has been used for short term lets.

#### Clause 2.4 of the Lease

25. Applying the facts to the covenant contained in clause 2.4, has the Respondent – by permitting a series of short term lets – been in breach of the covenant “not to use or permit the use of the Demised Premises or any part thereof otherwise than as a single private dwelling in the occupation of one family only”? The Respondent has not raised any legal arguments this point, simply maintaining that there have been no short term lets, but the point needs to be addressed nonetheless.
26. In *Caradon District Council v Paton*, the Court of Appeal dealt with a case in which two properties were used for summer holiday lets in circumstances where the conveyance to each relevant owner contained a restrictive covenant “not to use or permit to be used the property for any purpose other than that of a private dwelling house”. The Court of Appeal held that the occupation of the holiday makers was not for the purpose of use as a private dwelling house, Latham LJ stating that a person who is in a holiday property for a week or two would not describe that as his or her home and that therefore the occupation could not be for the purposes of use as a private dwelling house.
27. *Tendler v Sproule* concerned a tenancy agreement “not to use the premises ... for any trade or business but keep the same as a private dwelling-house only”. It was held by the Court of Appeal that the taking in of paying lodgers was a breach both of the prohibition on

using the premises for a business and the obligation only to use them as a private dwelling-house.

28. *Nemcova v Fairfield's Rent Limited* concerned the granting of short term lettings of a flat and advertising its availability for such short term lets in the context of a covenant in a long lease not to use the premises for any purpose whatsoever other than as a private residence. The Upper Tribunal concluded in the context of the facts of the case, the wording of the lease as a whole and the nature of the short term lettings that the long leaseholder was in breach of the relevant lease covenant. His Honour Judge Stuart Bridge took the view that the duration of the occupier's occupation was material and that for a property to be used as the occupier's private residence there must be a degree of permanence going beyond being there for a weekend or a few nights.
29. In the present case the covenant is not to use the Property "otherwise than as a single private dwelling in the occupation of one family only". This wording is slightly different from the wording in each of the covenants forming the basis of the cases referred to above. The phrase "private dwelling" is used, rather than "private dwelling house" or "private residence", but it does not follow that these differences are material.
30. The Property forms part of what appears to be a relatively sought-after block of flats, the Property having been purchased for over £300,000 back in 2006. The Lease itself contains a number of covenants governing good block management, and there is specific reference in the Seventh Schedule to the block being a building of high class units. In that context, it is in my view reasonable to conclude that the purpose – or at least a significant part of the purpose – of imposing an obligation not to use the Property "otherwise than as a single private dwelling in the occupation of one family only" will have been to preserve the character of the block as one where families (or individuals) regard the Property as their home and treat it and the block accordingly.
31. The evidence in this case indicates that there have been a series of short term lets for, seemingly, a few nights at a time. In this context, His Honour Judge Stuart Bridge's comments in *Nemcova v Fairfield's Rent Limited* are pertinent in that for a flat to be used as a private dwelling there needs to be a degree of permanence in the occupier's occupation going beyond a few nights. This is also consistent with the two Court of Appeal decisions in *Caradon District Council v Paton* and *Tendler v Sproule* (albeit that one related to restrictive covenants contained in a conveyance), and I see no good reason to distinguish any of these cases simply on the basis of the very slightly different wording of each covenant.



32. Therefore, in conclusion on this point, I am satisfied that there has been a breach of the covenant not to use the Property otherwise than as a single private dwelling in the occupation of one family only.

Clause 2.11 of the Lease

33. The Respondent has admitted being in breach of the covenant contained in this clause. As I have found as a matter of fact that there has been a series of short term lets, it would seem that this breach has occurred on each occasion on which a short term letting has been entered into. However, without more specific details as to the dates of the short term lets I am unable to make specific findings on this point beyond its application to the tenancy agreement in favour of Limina BV. Nevertheless, it is noted that the Respondent has admitted a breach of this clause.

Clause 3.3.1 of the Lease

34. This contains a covenant not to use or permit the use of the Property in any manner which may be or become a nuisance or annoyance. The Applicant has offered some witness evidence to suggest that the frequent use of the Property on short term lets has caused annoyance to other occupiers, but in my view that evidence is not precise enough or strong enough to demonstrate a breach of this covenant. There is a reference to an abandoned buggy but no supporting evidence to indicate that it was abandoned by an occupier of the Property. There are also references to increased garbage and unknown people being a source of nuisance, but in my view this evidence is not sufficiently specific to demonstrate on the balance of probabilities that there has been a breach of this covenant.
35. In conclusion, I am not satisfied that there has been a breach of this covenant.

Preamble to Seventh Schedule

36. This provision, coupled with clause 3.4, constitutes a covenant not to cause inconvenience to the landlord or to other occupiers of the block or to prejudice the character and value of the block as a building of high class units.
37. There is persuasive evidence to indicate that there have been new occupiers of the Property on a very frequent basis. There is some evidence to suggest that this has at times caused inconvenience to other occupiers, but in particular I am satisfied that allowing that level of turnover of occupiers in the Property can reasonably be said to prejudice the character and value of the block as a building of high class units. Mr Arjun Lakhani states that it has affected the character

of the building as the Property resembles a cheap hotel as opposed to a residential home, and on the basis of the evidence provided I accept this as a fair assessment.

38. In conclusion, I am satisfied that there has been a breach of this covenant.

### **Cost applications**

39. No cost applications have been made.

**Name:** Judge P Korn (Chairman)      **Date:** 6<sup>th</sup> March 2017

### **RIGHTS OF APPEAL**

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. 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.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. 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.