First-tier Tribunal
Property Chamber
(Residential Property)

844

Case reference	:	**CAM/00MG/LBC/2017/0011**
Property	:	**21 Garnet House,** **11 Merrivale Mews,** **Milton Keynes,** **MK9 2FQ**
Applicant	:	**Avon Ground Rents Ltd.**
Respondent	:	**Geolinks Ltd**
Date of Application	:	**4th October 2017**
Type of Application	:	**For a determination that a breach has occurred in a covenant or condition in a lease between the parties (Section 168(4) Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"))**
Tribunal	:	**Bruce Edgington (lawyer chair)** **David Brown FRICS**

DECISION

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1. In respect of the Lease of the property dated 6th October 2008 wherein the Applicant is the current freehold reversioner and the Respondent is the current long leaseholder, the determination of the Tribunal is that there has been a breach of the tenant's covenant in clause 3.1 and Schedule 3, paragraph 15 in such lease.

2. The Respondent is ordered to reimburse the fee paid by the Applicant to this Tribunal in the sum of £100 within 28 days from the date of this decision.

3. The Tribunal makes no further order for payment of costs pursuant to rule 13 of the **Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013** ("the 2013 rules")

Reasons

Introduction

4. The Applicant has applied to the Tribunal for a determination that the Respondent is in breach of the terms of a long lease. The lease is dated 6th October 2008 and is made between Abbeygate Helical LLP (1) and Kingsoak Homes Ltd. (2). It is for a term of 150 years from 29th September 2007 with a rising ground rent. Clause 3.1 is the tenant's

covenant to comply with the obligations set out in Schedule 3. Paragraph 15 in such Schedule is the usual requirement upon the tenant to serve the landlord with formal written notice of any assignment or mortgage of the balance of the term within one month thereof and pay the landlord's registration fee which is set at a minimum of £35 plus VAT for every transaction.

5. The law as it stands is that the only task of this Tribunal is to say whether there has been a breach. The Upper Tribunal case discussed below makes it clear that this is the case even if the breach had been rectified so that there was no longer a breach at the date of the Tribunal's determination. The reason for that is that this Tribunal is not determining whether to grant relief against forfeiture. That is a matter for the court.

6. The evidence filed with the Tribunal consists of a statement of case dated 7th December 2017 prepared by Lorraine Scott, a solicitor acting for the Applicant. There is also a statement from Yaron Hazan, on behalf of the managing agent of the same date. Both statements contain a statement of truth. Neither statement is challenged by the Respondent and will therefore be accepted by the Tribunal. In fact the Respondent has not filed anything.

7. The Tribunal issued a directions order on the 17th November 2017 requiring both parties to file evidence. The Tribunal then said that in view of the nature of the alleged breach, it would not need to inspect the property and would be content for the matter to be determined on a consideration of the papers on or after 26th January 2018. However, it added that if either party wanted an oral hearing, this would be arranged. No request for a hearing was received.

The Law

8. Section 168 of the 2002 Act introduced a requirement that before a landlord of a long lease could start the forfeiture process and serve a notice under Section 146 of the **Law of Property Act 1925,** he or she must first make "*...an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred*".

9. On 1st July 2013, the Leasehold Valuation Tribunal was subsumed into this Tribunal which took over that jurisdiction.

Discussion

10. In the case of **Forest House Estates Ltd. v Al-Harthi** [2013] UKUT 0479, LRX/148/2012, Peter McCrea FRICS considered the matters which should be determined by this Tribunal in circumstances relevant to this determination. He said, at paragraph 30,:-

> *"The question of whether a breach had been remedied by the time of the LVT's inspection was not an issue for determination by the LVT. Questions relating to remedy, damages for breach and forfeiture are matters for the court. The LVT was entitled to record the fact that the breach had been remedied by the time of its inspection, but that finding was peripheral to its main task under*

section 168(4) of the 2002 Act. The LVT should have made an explicit determination that there had been a breach of covenant, notwithstanding that the breach had subsequently been remedied at the time of the LVT's inspection"

11. The only parts of the Applicant's evidence which are relevant to the matter to be determined can be encapsulated into a short chronology as follows:

    (a) 21st December 2016 – Leasehold interest in the property assigned to Geolinks Ltd.
    (b) 3rd March 2017 – Notice of Assignment served registering an assignment of the leasehold interest into the name of Omar Muttawa
    (c) 20th July 2017 – The interest of Geolinks Ltd. registered at the Land Registry
    (d) 4th October 2017 – this application made
    (e) 11th October 2017 – solicitors tendered *"a Notice of Assignment in respect of Geolinks Limited"* according to the witness Yaron Hazan.

12. No copy of the last notice mentioned in the chronology has been filed and there is no indication as to whether any fee was paid. However, even if it has now been served, it does not fully remedy the breach as it was not served within a month.

Conclusions

13. As far as the alleged breach is concerned, it is proved that such a breach has occurred. It is important to note that during the period when the Applicant was attempting to find out exactly who the correct tenant was, and where it was, alleged debts of well over £7,000.00 appear to have been incurred in respect of fees, ground rent and service charges.

Costs and fees

14. The Applicant has asked for 2 orders under rule 13 of the 2013 rules namely a reimbursement of the £100 fee paid to the Tribunal and then £4,510 in legal costs.

15. Rule 13(2) says that *"the Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party..."*. In this case, there has been a clear breach of the terms of the lease and the Tribunal orders such reimbursement.

16. Rule 13(1)(b) says that the Tribunal may make a costs order *"if a person has acted unreasonably in bringing, defending or conducting proceedings"* before this Tribunal in this sort of case. The rules says that a party making such an application for costs must serve the other party with such application. In this case, such application is at the end of the bundle submitted and is dated 12th January 2018. However there is no indication as to if, let alone when, such application was served on the Respondent.

17. Be that as it may, the Tribunal will deal with this application on its merits. The Applicant deals with the case of **Willow Court Management Company (1985) Ltd. v. Mrs. Rant Alexander and Ors** LXR/90/2015. The correct reference for the appeal is [2016] UKUT 290

(LC). This case confirmed that **Ridehalgh v Horsefield** [1994] Ch.205 is still good law when dealing with the definition of unreasonable conduct i.e. it is 'vexatious and designed to harass rather than advance the resolution of the case'. In other words, the end result of the case is rather a side issue. Just because a party has a bad case does not, of itself, lead to a costs order.

18. The Applicant's case is that the Respondent has been evasive and "*despite repeated attempts and multiple chasers prior to issue of proceedings, no comment was made on the issue of the breach and the Applicant was left with no choice but to make an application to the Tribunal and incur the costs of same.*".

19. With the greatest of respect to the Applicant, this rather misses the point. This Tribunal is a 'no costs' forum. Parties who apply, do so on the basis that they will not recover costs unless the lease provides otherwise. As **Willow Court** makes clear, a rule 13 order can only be made where 'vexatious' conduct 'designed to harrass' can be proved. In this case, the Applicant has made an application in respect of a straightforward breach and within these proceedings, the Respondent has not conducted itself badly. Indeed, it has not 'conducted' itself at all.

20. Thus, even if service of the application had been proved, it would and could not have been granted in the circumstances alleged.

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Bruce Edgington
Regional Judge
26th January 2018

ANNEX - RIGHTS OF APPEAL

i. 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.

ii. 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.

iii. 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.

iv. 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.