FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AU/LBC/2019/0058**
Property	:	**Flat A, 30 Jackson Road, London N7 6EJ**
Applicant	:	**Peter George Brand**
Respondent	:	**David Evan Williams**
Type of Application	:	**Application for determination under section 168(4) Commonhold and Leasehold Reform Act 2002 (breach of covenant in lease)**
Tribunal Members	:	**Judge P Korn** **Mr H Geddes**
Date of Decision	:	**28th October 2019**

DECISION

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Decision of the Tribunal

The Tribunal determines that, on the basis of the evidence provided, a breach of covenant under the Respondent's lease has occurred. Specifically, the Respondent has granted an underlease without obtaining a deed of covenant from the sublessees in favour of the lessor as required by clause 2.12.3 of the Respondent's 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 a breach of covenant has occurred under the Respondent's lease.

2. The Respondent is the leaseholder/lessee of the Property and the Applicant is the Respondent's landlord/lessor. The Respondent's lease ("**the Lease**") is dated 18th November 2011 and was made between the Applicant (1) and the Respondent (2).

3. 30 Jackson Road comprises three self-contained flats, and the subject Property is the ground floor flat.

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 decided on the papers alone (i.e. without a hearing) unless either party requested a hearing. No such request has been received and the case is therefore being dealt with on the papers alone without a hearing.

Applicant's case

5. The Applicant has provided a copy of an assured shorthold tenancy agreement dated 15th April 2019 made between the Respondent (1) and Ms Harriet Patricia Miller and Ms Mollie Louise Thorpe (2) relating to the Property. He has also provided a copy of a deed of covenant dated 22nd June 2019 and some copy correspondence.

6. The granting of the assured shorthold tenancy agreement constitutes an underlease of the Property within the meaning of clause 2.12.2 of the Lease. Under clause 2.12.3 of the Lease the lessee covenants: *"Prior to completing any such dispositions as are referred to in Clause 2.12.2 hereof to arrange for the transferee assignee or sublessee to execute and deliver to the Lessor's Solicitor a Deed of Covenant made directly between that party and the Lessor whereby that party covenants to comply with the terms of the Lease insofar as the Lessee fails to do so …"*.

7. The deed of covenant dated 22nd June 2019 does not contain a covenant by the sublessees in favour of the lessor; instead it contains a covenant by the **lessee** (i.e. the Respondent) in favour of the lessor (i.e. the Applicant). This is then pointed out in correspondence.

Respondent's case

8. The Respondent states that it was difficult to have the deed of covenant in place within the one month time limit stipulated in the Lease, and he gives some practical reasons including his work commitments, his location, the Applicant's failure to point out the problems with the deed of covenant for three weeks and the sublessees going on holiday.

9. The Respondent adds that it was never his intention to delay the serving of the deed of covenant and that he appreciates the Applicant's right to have the extra cover that it provides.

The statutory provisions

10. 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

11. We have already quoted the relevant part of the Lease relied on by the Applicant, namely clause 2.12.3. It is common ground between the parties that an underlease was entered into, and in those circumstances, it is clear (and the Respondent does not deny) that clause 2.12.3 requires a deed of covenant to be executed and delivered.

12. The deed of covenant must, under clause 2.12.3, contain a covenant under which the sublessee covenants to comply with the terms of the Lease insofar as the lessee fails to do so. The deed of covenant provided by the Respondent clearly fails to do this as it merely contains a covenant on the part of the Respondent (i.e. the lessee) to comply with the terms of the Lease, which clearly he already covenanted to do when signing the Lease. A covenant from the Respondent is therefore superfluous and not what is required by clause 2.12.3, whereas a covenant from the sublessee(s) adds an extra layer of protection for the lessor and is what is envisaged by clause 2.12.3.

13. The Respondent has provided an explanation for his failure to comply with clause 2.12.3, but none of his submissions show that he was not in breach of covenant. At most they provide some context for the breach.

14. Under section 168(4) of the 2002 Act, the role of the tribunal in determining whether a breach of covenant has occurred is quite a narrow one. In particular, the tribunal is not being asked to pass judgment as to the level of seriousness of the breach or as to the likelihood that a determination that a breach has occurred could lead to forfeiture.

15. On the basic question as to whether there has been a breach, our decision is that there has been a breach. The Respondent has not complied with the requirement to arrange for the sublessees themselves to execute and deliver a deed of covenant and there is no plausible evidence before us that the Applicant has waived the breach.

Cost applications

16. No cost applications have been made.

Name:	Judge P Korn	**Date:**	28th October 2019

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.