



First-tier Tribunal Property Chamber (Residential Property)

Case reference : CHI/00ML/LBC/2022/0008

Property : Holiday Home 51, Eastern Concourse,
Brighton Marina Village, Brighton BN2 5UQ

Applicant : Premier Marinas (Brighton) Ltd

Respondent : Tony Richard McGarity

Represented by : Antonio Carlos Da Silveira (Attorney
Under a Lasting Power of Attorney)

Date of Application : 14th March 2022

Type of Application : For a determination that breaches have
occurred in covenants and/or
conditions in a lease between the parties
(Section 168(4) Commonhold and
Leasehold Reform Act 2002 (“the 2002
Act”))

Tribunal : Judge Bruce Edgington

Determination : On the papers

Date of Decision : 28th September 2022

DECISION

Background

1. The long lease of the property is dated 19th December 1985 and the term is for 50 years less 3 months commencing on 8th February 1985. The Respondent is the current owner of the leasehold title.

Decisions

2. This application alleges that the Respondent is in breach of a number of terms of the said lease, as follows:

(a) 2nd Schedule, paragraph S2/ (p)

“Not to use or suffer or permit to be used the Demised Premises or any part thereof otherwise than as a holiday home and in particular not to suffer or permit any part of the Demised Premises to become the sole or main residence of any person or persons”.

The evidence is that the Respondent lived at the property from April 2020 until he was arrested on the 30th October 2020.

Decision: Breach confirmed. The evidence is that the Respondent acquired the property and moved into it, living there until he was arrested for setting light to it. Since then, he has been in custody and is now serving a prison sentence of 5 years for arson plus 8 months for another arson offence.

(b) 2nd Schedule, paragraph S2/ (c) (1)

“To keep the Demised Premises in good and substantial repair and condition at all times”

2nd Schedule, paragraph S2/ (d)

“To ensure so far as is practicable that all parts of the Demised Premises are kept clean and free from litter”

2nd Schedule, paragraph S2/ (q) (1)

“Not to use or suffer to be used the Demised Premises or any part thereof for any noisy noxious or offensive illegal or immoral purpose or so as to cause nuisance or annoyance or inconvenience to the Borough Council their tenants or the occupiers of neighbouring parts of the Marina”

The evidence is that:

- (a) On the 24th April 2020, Security Officers and the police had to break into the property and found that the lock had been broken and that the interior was in a very poor state and had been substantially damaged;
- (b) The Respondent also caused a disturbance inside the property on the 21st May 2020 when the police had to be called;

- (c) On the 16th July 2020, the Respondent locked himself out of the property and had to be let in and he set light to the microwave, which a security officer extinguished. Later he was seen hitting other holiday homes with a pole. He was arrested and the police found drugs on the Respondent;
- (d) On the 16th October 2020, the Respondent was accused of fighting with the owner of another holiday home and had broken his window;
- (e) On the 30th October 2020 the property was found to be on fire. That caused considerable damage to the property and to adjoining holiday homes numbered 50 and 52. The Respondent pleaded guilty to arson and is now in prison serving a 5- year sentence for that offence.
- (f) The Applicant's insurance premium has been doubled.

Decision: Breach confirmed. The evidence of the behaviour of the Respondent and the condition of the Property clearly demonstrate breaches.

Reasons

Introduction

- 3. The Applicant has applied to the Tribunal for a determination that the Respondent is in breach of the terms of a long lease so that it can serve a forfeiture notice pursuant to section 146 of the **Law of Property Act 1925** ("the 1925 Act").
- 4. The bundle of documents filed with the Tribunal for the purpose of the hearing includes witness statements of several witnesses and, in particular from Michael Hatch, who is the Marina Manager for the Applicant.
- 5. The Tribunal issued Directions orders on the 26th May 2022 and 5th July 2022 requiring both parties to file evidence. The latter considered that this case could be dealt with on the papers without an oral hearing and there has been no request for such a hearing.

The Law

- 6. 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 1925 Act, 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*".
- 7. On 1st July 2013, the Leasehold Valuation Tribunal was subsumed into this Tribunal which took over that jurisdiction.

Inspection

8. I did not consider it necessary to inspect the property in order to determine the issues raised. The intended approach was mentioned in the Directions orders and no-one has asked an inspection.

Conclusions

9. The evidence filed on behalf of the Applicant is extensive and clear. The Tribunal has been made aware of the Enduring Power of Attorney signed by the Respondent in favour of Antonio Carlos Da Silveira. The Tribunal has served both the Respondent and Mr. Da Sileira with all of the papers including the directions orders but there has been no response from either the Respondent or Mr. Da Silveira.
10. As far as the alleged breaches are concerned, the Tribunal has considered all of the evidence, including a certificate of conviction for the arson offence, and its conclusions are set out in the decisions above.

ANNEX - RIGHTS OF APPEAL

- i. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.