



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

Case reference : **LON/00BK/LBC/2021/0077**

**HMCTS code
(paper, video,
audio)** : **V: CVPREMOTE**

Property : **Flat 9 Wellesley Court Maida Vale
London W9**

Applicant : **Seaglen Investment Limited**

Representative : **Mr Martin Comport**

Respondent : **Sadaat Saeidi Samani**

Representative : **In person**

Type of application : **Determination of a breach of Covenant
under Section 168(4) of the
Commonhold and Leasehold Reform
Act 2002**

**Tribunal
member(s)** : **Judge Daley
Mr Andrew Lewicki FRICS-Professional
Member**

Venue : **Heard Remotely on 7 April 2022 at
10AM**

Date of decision : **7 April 2022**

DECISION

Description of hearing

This has been a remote video hearing which has been not objected to by the parties. The form of remote hearing was V: SKYPEREMOTE. A face-to-face hearing was not held because no-one requested the same, and all issues could be determined in a remote hearing. The documents that the Tribunal were referred to are in a bundle of 84 pages, the contents of which have been noted.

The Decision

- I. The Tribunal determines that on the Respondent's admission in writing and at the hearing that he has breached clause 2 (15) of the lease in relation to redecoration of the flat.**
- II. The Tribunal finds no breach in respect of the alleged breach of clauses, in respect of the other breaches.**

The Application

1. On 15 November 2021, the Applicants applied for a determination of whether the Respondent had committed a breach of the clauses in the lease.
2. The premises which are subject to the application is a 1 bedroom, ground floor flat in a purpose-built block of 160 flats.
3. The Applicant is the registered proprietor of the head leasehold interest of the Flat 9 Wellesley Court Maida Vale London W9 1RN ("the Premises") pursuant to a lease dated 08 January 1988 and made between Greenwood Reversions Limited (1) and the Applicant (2) ("the Head Lease").
4. The Respondent is the underlessee of Flat 9 Wellesley Court Maida Vale London W9 1RN ("the Premises") pursuant to a lease dated 21 May 2007 and made between the Applicant (1) and Staff trade Limited ("the Lease"). The Lease is a statutory extension of a lease dated 29 November 1971 and made between the Applicant (1) and Beryl Symonds ("the Previous Lease") subsequently assigned to the Respondent pursuant the assignment of the lease.
5. The lease which is dated 27 May 2007 contains the following covenants-:

By Clause 31 of the Lease and Lease Clause 2 (5) of Previous Lease and Paragraph 1 of the Third Schedule to the Previous Lease: "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 occupation of one family or household."

By clause 31 of the lease and clause 2(5) of the previous lease and Paragraph 2 of the Third Schedule

Not to use or permit to be used the Flat or any part thereof or any part of the said Building used by the Lessee in common as aforesaid for any purpose from which a nuisance can arise to the Lessor or the owner lessees and occupiers of the other flats.

By Clause 3.1 of the Lease and Clause 2 (15) of the Previous Lease

“(1)... and not at any time to ... underlet or part with possession thereof except as a whole

(Not to ...underlet or part with possession of the Flat without first obtaining from the ...underlessee or undertenant a direct covenant directly with the Lessor to pay the contribution covenanted to be made under sub-clause (2) hereof ... and to observe and perform all the covenants on the part of the Lessee and conditions herein contained.

3...

(4) Upon every ... underlease... to give notice the Lessor within one month thereafter notice in writing thereof and also if required by the Lessor to produce each such document to the Lessor’s solicitor and pay a fee of £30 plus, Vat or such greater registration fee as the Landlord reasonably requires...”

6. Directions were given on 29 November 2021. where the following directions were given:- (2) The tribunal will reach its decision on the basis of the evidence produced to it. The burden of proof rests with the applicant. The tribunal will need to be satisfied: (a) that the lease includes the covenants relied on by the Applicant; and (b) that, if proved, the alleged facts constitute a breach of those covenants. (4) The respondent and any mortgagee or occupier of the property should seek independent legal advice, as these proceedings may be a preliminary to court proceedings to forfeit the lease.

7. This matter was listed for a remote hearing on 7 April 2022.

The Hearing

8. The hearing was attended by Mr Martin Comport Solicitor and Mr Solomon Unsdorfer (Applicant’s property manager of Parkgate Aspen Limited) and the Respondent, Mr Saadat Saeidi-Samani. all of those who attended, including the Tribunal attended by video-link.

The Preliminary Matters

9. At the hearing Mr Comport asked the Tribunal to determine as a preliminary issue, whether Mr Saeidi-Samani had made an admission that he had breached clause 2(15) and the user clause, in schedule 3 of the lease.
10. Mr Comport referred the Tribunal to page 61, a letter dated 19 February 2022, sent by the Respondent in which he stated:- "...In response Clause 3.1 of the Lease and Clause 2(15) of the Previous Lease I was never asked to provide a deed of covenant, copy tenancy agreement or fee to the Applicant, however I am attaching the current short-assured tenancy agreement." In respect of the user clause, Mr Saeidi-Samani admitted that he had not lived at the property however he did not accept that he breached the user clause.
11. Mr Comport referred us to Clause 2 (15) of the lease.
12. We heard from Mr Saeidi-Samani, that whilst he accepted that he had not previously provided the documents, he had been unaware of the need to provide the documents and he had not been requested by the Applicant to provide the documents.
13. The Tribunal explained that Mr Saeidi-Samani was taken to have signed the lease and agreed to comply with the terms of the lease, given this, the onus was on him to provide the documents which he had not done.
14. Mr Comport indicated that if the Tribunal found that he had breached clause 2.15 of the terms of the lease, by way of admission the Applicant would not pursue the other breaches, the issues in respect of costs would be dealt with separately.
15. Mr Saeidi-Samani indicated that on the basis upon which it had been explained to him by the Tribunal he accepted breaching clause 2 (15).
16. The Tribunal explained that in respect of the cost provisions he should consider what the lease had to say about the recoverability of costs, and this would inform him in further discussions or correspondence with the Applicant's solicitor.

The Law

Section 168 (4) of the Commonhold and Leasehold Reform Act 2002

17. 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.

The Decision of the Tribunal

Clause 2 (15) of the lease

18. The tribunal having considered the terms of the lease, *and having heard the submissions of the Applicant's solicitor and the Respondent* finds that on the admission of the Respondent that he had not provided the Applicant with the documents set out in clause 2 (15) the terms of the lease were breached

19. The Tribunal makes no findings of a breach of the lease in respect of other clauses.

Application under s.20C and refund of fees

20. The Tribunal having considered its determination in respect of the lease, considers that as the Respondent admits to breaching the lease, decided that it is not just and equitable to make an order under Section 20C.

21. Further the Tribunal makes an order for the repayment of the application and hearing fees.

Signed: Judge Daley

Date: 7 April 2022

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).