FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LBC/2013/0057**
Property	:	**Flat 37 Stourcliffe Close, Stourcliffe Street, London W1H 5AR**
Applicant	:	**Bryanston Property Co Limited**
Representative	:	**Kidd Rapinet solicitors**
Respondent	:	**Dr O Majekodunmi**
Representative	:	**Anthony Louca Solicitors**
Type of Application	:	**For the determination of a breach of covenant**
Tribunal Members	:	**Judge S O'Sullivan**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**26 September 2013**

DECISION

Decisions of the tribunal

(1) [The tribunal determines that

The application

1. The Applicant seeks a determination pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 that the respondent tenant is in breach of various covenants contained in his lease.

2. In particular the applicant asserts that the respondent has, without permission, allowed the property to be sub-let and an Enforcement Notice has been served by Westminster Council.

3. Directions were made dated 8 August 2013 further to which both parties submitted various documentation.

4. This matter was considered by the tribunal by way of a paper determination on 23 September 2013.

5. The Applicant had filed a bundle which included a copy of the Enforcement Notice, witness statement of Graeme Bellenger dated 6 September 2013 in support of the application and various copy correspondence between the parties. This included a letter to Mr Bellenger from Ms Slattery at Westminster City Council outlining the investigations they had made in relation the alleged breach of planning control. No witness statement was produced by Ms Slattery however.

6. The Respondent had filed a bundle of documents including witness statements of Jason Cooke dated 17 September 2013, Eugene Devaney of the same date and the Respondent likewise dated 17 September 2013.

The background

7. The property which is the subject of this application is a flat contained in a block of flats.

8. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

9. The Respondent holds a long lease of the property, a copy of which the tribunal had in the bundle. The specific provisions of the lease will be referred to below, where appropriate.

The issues

10. The application requested a determination that the Respondent was in breach of clause 15(16) and 15(17) of the lease. The Applicant relied on the Enforcement Notice 28 June 2013 in alleging a breach of planning control in that the property has been used for *"temporary sleeping accommodation...for less than 90 consecutive nights for consideration"*.

11. The Applicant also alleged that there had been a breach of clause 15(23) in that the property had been sublet without consent.

12. The Respondent denied that that there had been a breach of planning control. He relied on tenancy agreements dated 29 May 2013 and 15 October 2012, both for a term of six months. He had appealed the Enforcement Notice and copies of that appeal and submissions were included in the bundle. He also relied on a series of documentation which he says one would expect to see from an owner occupier comprising utility bills, invoices and correspondence from the residents association. Mr Cooke gave evidence as to the making of general repairs to the property in the absence of the Respondent during which the property was vacant or occupied by members of the Respondent family or his friends. Mr Devaney gave evidence that he is an acquaintance of the Respondent who holds keys to the flat and tidies the flat when the Respondent is away and has never seen anyone but family and friends.

13. At the date of the consideration the appeal against the Enforcement Notice had not been determined.

14. By a statement dated 6 September 2013 Mr Bellenger of Kidd Rapinet, Solicitor's for the Applicant, submitted that on the basis of the evidence provided the tribunal make a determination that there has been breach of clauses 15(16) and 15(17) of the lease.

15. He also invites the tribunal to make a determination that in any event there has been a breach of clause 15(23) of the lease as no consent has been obtained for the two underlettings of the property, in respect of which copy tenancy agreements have been provided. It appears that the Respondent admits this breach as his solicitors have requested retrospective consent.

The Law

16. Section 168(4) provides that;

> *"A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred."*

The Tribunal's decision

17. The Tribunal determines that there has been a breach of the covenant at clause 15(23) of the lease as the Respondent failed to obtain consent for the underletting. This appears to have been admitted by the Respondent who has now made an application for retrospective consent in respect of the underletting.

18. The Tribunal did not have sufficient evidence before it to find that there has been a breach of clauses 15(16) and 15(17). It therefore determined that there has been no breach of those covenants under section 168(4). The Tribunal had been provided with copy tenancy agreements which evidenced that the property has been subject to formal tenancy agreements since at least October 2012. The Respondent had also produced 2 witness statements which supported the Respondent's claim that either he or his family had been in occupation during the relevant period. The Tribunal did not have a witness statement from the Applicant which set out Westminster's investigations and findings into the alleged subletting and the Tribunal had no evidence whatsoever of the basis upon which the persons found at the address were occupying. The Tribunal therefore concluded on the basis of the evidence before it that there was no breach of clauses 15(16) and 15(17).

19. Solicitors for the Applicant also requested that the tribunal make a declaration that the Applicant is entitled to its costs of the application where they have been incurred as a precursor to forfeiture under clause 15(15) of the lease. The tribunal has no power to make such a declaration. However the Applicant may wish to consider whether an application for such costs would fall as part of any subsequent application for forfeiture or whether it wishes to make a separate application to the tribunal in respect of the payability or reasonableness of an administration charge under schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Name S O'Sullivan

Date: 26 September 2013