



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

Case Reference : CAM/42UD/LBC/2016/0012

Property : 47c Anglesea Road, Ipswich IP1 3PR

Applicant : Equity Group Ltd

Representative : Holy Sadler, solicitor, Gotelees

Respondent : Jean Matheson Liddell

Representative : no appearance or representation

Type of Application : for an order that a breach of a covenant or a condition in the lease has occurred
[CLRA 2002, s.168]

Tribunal Members : G K Sinclair, D S Brown FRICS & G F Smith MRICS
FAAV REV

Date and venue of Hearing : Thursday 15th September 2016 at
Ipswich Magistrates Court

Date of decision : 30th September 2016

DECISION

- Summary paras 1–2
- The law paras 3–5
- The lease paras 6–10
- Service paras 11–19
- Inspection and hearing paras 20–27
- Determination paras 28–33

Summary

1. By this application dated 14th June 2016 the landlord seeks a determination that the respondent tenant is in breach of a specific covenant in her lease dated 8th November 1988, namely “not to hang or expose or cause or permit to be hung or exposed any washing or any other clothes or materials on any part of the demised premises so as to be visible from the outside of the demised premises”.
2. For the reasons set out below the tribunal is satisfied that the lessee has been lawfully served with a copy of this application and that she is strictly in breach of her covenant to comply with regulation 12 in the third schedule which is relied upon, namely by hanging washing from lines erected within the confines of the carport immediately in front of her garage, so that such washing is visible only to a person located in the rear vehicular accessway - if directly in front or within a limited angle of view.

The law

3. Section 168 of the Commonhold and Leasehold Reform Act 2002 provides :
 - (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 (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.
 - (3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.
 - (4) 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 a covenant or condition in the lease has occurred.
 - (5) ...
4. Section 169 contains supplementary provisions, none of which are material to this decision.
5. The question whether a lease is forfeit remains one for the court, as is the exercise of its discretion to grant relief against forfeiture; an issue which in the context of a long lease is usually of considerable concern to any mortgagee of the tenant’s leasehold interest. In this case, according to the official copy of the register of

title (as at 7th March 2016), the only charge recorded is a registered charge dated 8th November 1988 in favour of Yorkshire Building Society, trading as Norwich & Peterborough Building Society.

The lease

6. The relevant lease dated 8th November 1988 was granted by the Secretary of State for Social Services to the respondent lessee for a term of 125 years from 25th March 1988 at an initial annual rent of £50 for the first 25 years, rising by £50 per year in each successive period of 25 years. The current rent is therefore £100.
7. The demised premises comprise the first floor flat, staircase, landing and garage, as described in the First Schedule, with “the building” being two adjoining blocks known as Tunbridge House (47A-D) and Salisbury House (49A-D), Anglesea Road, Ipswich.
8. The tenant’s covenants appear in clause 2, and by clause 2(19) she covenants “to perform and observe throughout the said term the regulations specified in the Third Schedule hereto”. That Schedule recites twelve regulations.
9. These regulations include :
 2. No act or thing which shall or may be or become a nuisance or damage annoyance or inconvenience to the lessor or any occupier of the building or neighbourhood shall be done or suffered to be done in the demised premises or any part thereof nor shall the demised premises or any part of the building be used for any unlawful or immoral purpose nor shall there be brought or suffered to be brought to the demised premises any dangerous or offensive goods
 6. Not to permit any furniture of other article of whatsoever nature to be left in the common parts outside stairways outside passageways footpaths and vehicular accessways so that they shall be in any way obstructed or unreasonably soiled
 9. No outside television or radio aerial or other similar receiving aerial shall be affixed to any part of the building without the lessors consent (such consent not to be unreasonably withheld)
 11. The lessee and his licensees shall comply with all or any regulations which the lessor may from time to time reasonably make in respect of the common parts of the building and shall not do or permit anything which is or might reasonably be or become a nuisance or inconvenience to any other person in the building or the said gardens and grounds.

None of these regulations is relied upon.

10. The only regulation which it is said the lessee has breached is regulation 12 :
Not to hang or expose or cause or permit to be hung or exposed any washing or any other clothes or materials on any part of the demised premises so as to be visible from the outside of the demised premises

Service

11. The only address for the registered proprietor (i.e. the lessee) recorded at the Land Registry is that of the demised premises. These, however, are let to a tenant under what is assumed to be an assured shorthold tenancy. The lessee, whom the

tribunal was told is believed currently to reside at an address unknown in Saudi Arabia, has appointed a managing agent to look after the property on her behalf.

12. This is evidenced by correspondence from the lessor to Pauline Scott Property Management (which has an address at Martlesham Business Park, Ipswich). This specific issue was raised in a letter dated 11th March 2016, and a later letter dated 23rd March refers to a recent meeting between Mr Roberts for the lessor and a representative of the managing agent to discuss certain outstanding problems including the clothes in the carport.
13. The application itself identifies the respondent lessee and gives her address as the demised premises, as appearing on the registered title at the Land Registry.
14. Clause 10 of the lease provides that :
The provisions of section 196 of the Law of Property Act 1925 as amended by the Recorded Delivery Service Act 1962 shall apply to all notices and written demands served or made hereunder.
15. Section 196, in its current form, applies to notices served under the lease, such as a notice under section 146 warning that the demised premises are at risk of forfeiture. However, section 168 of the 2002 Act now provides that application must be brought to the tribunal for a determination that a breach has occurred before any step can be taken to serve a section 146 notice or attempt forfeiture. Section 196 does not apply to notices served in proceedings in the court.
16. Rule 8(1)(c) of the Land Registration Rules 2002 provides that the proprietorship register must contain an address for service of the proprietor of the registered estate in accordance with rule 198, sub-rules (3) & (4) of which provide that the registered proprietor **must** give the registrar an address for service which is a postal address, whether or not in the United Kingdom, and **may** give up to two more addresses for service, which may include a UK document exchange box number or an e-mail address.
17. Rule 29(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that :
When the Tribunal receives a notice of application in accordance with rule 26(1) or a statement of case in accordance with rule 28(4), the Tribunal must provide a copy of the application and any accompanying documents to the respondent.
18. Rule 16, dealing with the provision of documents, states :
 - (1) Any document to be provided under these Rules, a practice direction or a direction must be –
 - (a) sent by prepaid post or by document exchange, or delivered by hand to the address specified in paragraph (5)
 - (..)
 - (5) Subject to paragraph (6), the address for the purposes of paragraph (1)(a) is –
 - (..)
 - (c) in the case of any other person, body or authority, the usual or last known address of that person, body or authority.

19. The tribunal is satisfied that all reasonable steps were taken to notify the lessee of the application, that it is her responsibility to provide an address for service that will be sufficient to bring documents to her attention (which could include the address of her managing agent), and that in the circumstances it was in the interests of justice to proceed with the hearing in her absence, under rule 34 of the 2013 Rules. This is particularly the case because the demised premises are not at risk of forfeiture without the lessor first applying to the court for such an order, upon which the lessee may seek relief upon such terms as the court may provide. A managing agent that failed to alert its principal of the prospect of such proceedings would be failing in its duty and negligent.

Inspection and hearing

20. The tribunal inspected the exterior only of the demised premises at 10:00 on the morning of the hearing. It did so in the presence of Ms Sadler, the landlord's solicitor. Tunbridge House comprises four flats – two upstairs and 2 downstairs. It is built on a slope, with the ground falling away quite steeply towards the rear. To the left of this particular block, when observed from the road, is a vehicular ramp leading down to a level concrete yard running the full width of the two blocks (Salisbury House being to its right). Behind this yard is a row of tall trees. At the far end (the Salisbury House end) and at right angles is another residential block, but the windows are high up and from them it would not be possible to see from that angle into the carports mentioned below.
21. While the downstairs flats are several steps up from street level at the front, to the rear they are at first floor level, above two (of a set of four) enclosed bays running the full depth of the building. The first half of each bay is open at the front only, and halfway back is a garage door securing a single garage beyond. In other words, two cars can be parked per flat line astern : one in the garage and one blocking it in the carport. The sides of each carport, being integral to the structure supporting the flats above, are of solid brick construction supporting a full-width concrete beam roof. Above them, the rear wall of Tunbridge House was festooned at mid-height with six satellite dishes of varying types and sizes.
22. The tribunal noted that immediately in front of the garage and carport forming part of the demised premises there was parked a Ford Galaxy car, with its nose pointing in to the carport. All but the nose of the vehicle was parked outside. Inside, however, a nylon washing line was observed to be strung up in a zig zag from fixings just under the carport roof at each side. Some towels or other items were hanging from it. The lessor's letter to the managing agent dated 11th March 2016 had also referred to a DIY drain pipe having "been fitted in the carport which is discharging across the carpark causing a hazard/nuisance to other leaseholders". The tribunal did not observe any such DIY drain pipe during the inspection; nor was any water discharging into the rear yard.
23. In the carport immediately to the left (looking this time from the yard towards the rear of the block) the tribunal observed a Brabantia device which appears, when in use, to be a telescopic or springloaded clothes line. In a carport further to the left (possibly under Salisbury House) another nylon clothes line was seen.
24. In addition to providing a bundle including a copy of the lease the landlord's evidence comprised a short witness statement of Nicholas Edward Cann Roberts,

a director off Equity Group Ltd, dated 7th July 2016. Exhibited to that statement were a copy of the leasehold title recording the respondent as proprietor, some correspondence with the lessee's managing agents (Pauline Scott Property Management) and some photographs taken and provided by a person unknown.

25. As the photographs were taken by a person unknown on dates unknown, and there was nothing to indicate that the clothes line was in this rather than some other carport, the tribunal regarded them as of no evidential value. The inclusion of a photograph of a police car parked outside the front of the building, with two police officers standing outside it, bore no relevance to the complaint being made and seemed to have been introduced solely for its prejudicial value. The tribunal was not impressed.
26. Mr Roberts did not attend the hearing but his statement did, however, include at paragraph 8 some direct evidence of him observing washing hanging up in the carport on several occasions. This confirms what was seen by the tribunal on the day.
27. Ms Sadler answered such questions as she was able to do, thus revealing that the lessee was believed to be living in Saudi Arabia, that the managing agent never responds to correspondence, and that the complaints about tenants of this lessee come from a single lessee or occupant (contrary to what is said in paragraph 6 of Mr Roberts' statement). There was also a suggestion that there are issues of overcrowding, nuisance and waste affecting the demised premises but, as the tribunal had not had the opportunity to inspect the interior of the flat and the lessor was not seeking to rely upon any other alleged breach, the tribunal must ignore these vague allegations and concentrate on the issue whether regulation 12 alone has been breached.

Determination

28. The tribunal was unable to inspect the interior of the flat, and the lease plans as copied and included in the bundle are useless in showing the layout of the flat (as opposed to its elevation). The tribunal therefore does not know what facility there may be inside the flat for laundry and drying. If only two rooms deep then any washing hung up inside a front room would be visible from the street. That hung up in a rear room might be visible from some windows of the flats built at right angles, and to the rear.
29. Strictly, and only if someone deliberately sets out to walk or drive along the rear yard and look into the carport, washing hanging up inside it – where there is likely to be very little wind – will be visible. Trees obscure any view from further to the rear, which in any case is downhill. The flats at right angles to the rear yard cannot see into this carport, but might see a little distance into those closer due to the more acute angle of view. Perhaps as a matter of chance, or to obscure the view of and complaint by a particularly vociferous neighbour, a car happened to be parked right in front of the carport when the tribunal inspected.
30. With some reluctance, therefore, as no provision has been made by the lessor under the lease for any communal drying area, the tribunal must find that the respondent lessee – seemingly through the actions of her tenants – is strictly in breach of her covenant to comply with regulation 12 in the Third Schedule to the

lease as washing or any other clothes or materials have been hung on a part of the demised premises, namely within the carport, so as to be visible from the outside of the demised premises.

31. The commission of any actionable nuisance has neither been alleged nor proven.
32. So better to ensure that this decision comes to the attention of the lessee it is directed that the tribunal office also send a copy to the lessee's managing agent, at :

Pauline Scott Property Management
Suite F, Bristol Court
Betts Avenue
Martlesham Business Park
Ipswich
IP5 3RY

marked for the attention of Duncan Scott.

33. The respondent's attention is drawn to rule 51 of the 2013 Rules which provides that a decision which disposes of proceedings may be set aside by the tribunal if it considers it in the interests of justice to do so and, in this case, a party, or a party's representative, was not present at a hearing related to the proceedings; or there has been some other procedural irregularity in the proceedings. A party wishing to apply for this decision to be set aside (or for permission to appeal it) must do so within 28 days after the date on which the Tribunal sent notice of the decision to the party.

Dated 30th September 2016

Graham Sinclair

Graham Sinclair
Tribunal Judge