



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

<b>Case reference</b>	:	<b>LON/OOAH/LBC/2019/0054</b>
<b>Property</b>	:	<b>Flat 11 Farley Croft, 55 Ashburton Road, Croydon, Surrey CR0 6AQ (“the flat”)</b>
<b>Applicant</b>	:	<b>Chain Repair Limited (“the landlord”)</b>
<b>Representative</b>	:	<b>Michael Grundy</b>
<b>Respondent</b>	:	<b>James Nicholas Pittock</b>
<b>Type of application</b>	:	<b>Determination of an alleged breach of covenant</b>
<b>Tribunal members</b>	:	<b>Judge Angus Andrew Anthea Rawlence MRICS</b>
<b>Date and Venue of hearing</b>	:	<b>30 October 2019 10 Alfred Place, London WC1E 7LR</b>
<b>Date of decision</b>	:	<b>6 December 2019</b>

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**DECISION**

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**Decisions**

1. There have been breaches of the following covenants
  - a. To pay a registration fee of four pounds in respect of the underletting of the flat to Victoria Wiley; and
  - b. To use and occupy the flat as a private dwellinghouse only for the sole occupation of the tenant and the family of the tenant.

## **Application and Hearing**

2. The landlord applied under section 168(4) of the Commonhold and Leasehold Reform Act 2002 (“the Act”) for a determination that there have been breaches of two covenants contained in the lease of the flat. Those covenants are to be found in clauses 2(7) and 3(7).
3. At the hearing on 30 October 2019 the landlord was represented by one of its directors, Michael Grundy. Mr Pittock did not appear and was not represented. The address given for Mr Pittock in the application form is Willow Cottage, 20 Paper Court Lane, Ripley, Woking, Surrey GU23 6DS. Tribunal correspondence had been sent to Mr Pittock at that address including copies of the application form and directions and notification of the hearing date. No response had been received from Mr Pittock.
4. From email correspondence included in the hearing bundle two things are apparent. The first is that Mr Pittock is sadly separated from his wife and now lives at Rooks Coppice, Cowpitts Lane, North Poulner, Ringwood, Hants BH24 3JX. The second is that in an email to Mr Grundy of 7 August 2019 Mr Pittock acknowledged receiving the tribunal directions sent on 23 July 2019. In short, he is aware of these proceedings and has chosen not to engage with the tribunal.
5. Nevertheless, there was nothing before us to indicate that Mr Pittock had received notice of the hearing date and unfortunately an email from Mr Grundy to Mr Pittock incorrectly identified the hearing date as 31 October 2019. Following the hearing our case officer sent a letter to Mr Pittock at his new address. The letter gave Mr Pittock a final opportunity to respond to the application and/or request a further oral hearing, by 14 November 2019. The letter concluded that, in the absence of either written representations or a request for a further oral hearing, we would issue a decision based on the evidence before us on 30 October 2019. No response has been received from Mr Pittock.

## **Statutory framework**

6. Section 168 of the Commonhold and Leasehold Reform Act 2002 states: -
  - a. *A landlord under a long lease of a dwelling may not serve a notice under s.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 sub-section (2) is satisfied.*
  - b. *This sub-section is satisfied if –*
    - (a) *it has been finally determined on an application under sub-section (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.*
- c. *But a notice may not be served by virtue of sub-section (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.*
  - d. *A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*
  - e. *But a landlord may not make an application under sub-section (4) in respect of a matter which -*
    - (a) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
    - (b) *has been the subject of determination by a court, or*
    - (c) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

## **Background**

7. Farley Croft comprises 12 flats all of which have been sold on long residential leases. Farleycroft Limited purchased the freehold reversionary interest in Farley Croft in April 2018 and on 10 April 2018 it granted a 399-year overriding lease to the landlord. The shares in Farleycroft Limited are owned by Mr Grundy and his two children whilst the shares in the landlord are owned by Mr Grundy and his wife.
8. Mr Pittock purchased the leasehold interest in the flat in November 1999. The lease is for a term of 99 years from 1 July 1976. The leasehold interest is charged to the Royal Bank of Scotland. They have been given notice of the proceedings but have chosen not to participate in them.
9. The covenants on which the landlord relies are contained in clauses 2(7) and 3(7). For the purpose of this decision it is sufficient to summarise those covenants. The covenant in clause 2(7) requires the lessee to give notice of any disposition or devolution of the flat within 21 days and to pay a registration fee of four pounds. By clause 3(7) the lessee covenants to use the flat “.....as a private dwellinghouse only for the sole occupation of the Tenant and the family of the Tenant”.
10. Following a search of the electoral register Mr Grundy discovered that the flat was occupied not by Mr Pittock but by Victoria Wiley. Although the correspondence in the document bundle is not complete it is apparent that

Mr Grundy traced Mr Pittock to his Willow Cottage address. Mr Grundy drew Mr Pittock's attention to what he believed to be breaches of the two covenants referred to above. It is apparent that Mr Grundy offered to accept late registration of Ms Wiley's tenancy and to waive the user restriction on payment of an annual fee of £450.

11. Mr Pittock provided a copy of Ms Wiley's tenancy: it is for a term of one year from 7 July 2014 and she presumably held over. However, Mr Pittock did not pay the registration fee and neither did he accept Mr Grundy's offer of a waiver. He said that he would serve notice on "*the tenant*" and then sell the flat. He later asked for more time because Ms Wiley was pregnant but in his last email to Mr Grundy of 9 October 2019 he states that "*the tenant*" has been given notice and that the flat "*will be put on the market*".
12. Before us Mr Grundy said that as far as clause 2(7) is concerned he only seeks a determination that the registration fee is unpaid.

### **Reasons for our decision**

13. Although Mr Grundy agreed with our observation that a court would in all probability grant relief in any subsequent forfeiture proceedings the landlord is nevertheless entitled to the determinations that it seeks.
14. That apart we find the following facts based on the documents in the hearing bundle and Mr Grundy's oral evidence given at the hearing: -
  - a. In breach of clause 2(7) of the lease Mr Pittock did not pay the registration fee of four pounds required to be paid on the registration of Ms Wiley's tenancy; and
  - b. From 7 July 2014 to at least 9 October 2019 (the date of Mr Pittock's last email) the flat was occupied by Ms Willey and not be Mr Pittock or a member of his family in breach of clause 3(7) of the lease.
15. Consequently, we conclude and find that the breaches of covenant asserted by the Mr Grundy have occurred.

**Name: Judge Angus Andrew**

**Date: 6 December 2019**

### **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).