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FIRST-TIER TRIBUNAL

**PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00ML/LBC/2015/0005

Property : First and Second Floor Flat, 82
Marine Parade, Brighton East
Sussex BN2 1AJ

Applicant : Coles Lane Properties Ltd,
Landlord

Representative : McCoy Legal

Respondent : Mr M Brownlow Tower, Tenant

Representative : Dean Wilson LLP

Type of Application : Breach of covenant

Tribunal Members : Mrs F J Silverman Dip Fr LLM

Date of Paper determination : 22 June 2015

Date of Decision : 23 June 2015

DECISION

Decision of the tribunal

The tribunal determines that the Applicant has provided insufficient evidence to establish that the Respondent Tenant is in breach of covenant in relation to Clauses 2(13) of his lease.

Reasons

1 By an application dated 9 March 2015 the Applicant sought a declaration from the Tribunal that the Respondent tenant was and remains in breach of covenant of his lease. Directions were issued by the Tribunal on 19 March 2015.

2 The matter was considered by a Tribunal on 22 June 2015 as a paper determination. A bundle of papers (referred to below) which included statements of case from both parties, was considered by the Tribunal in reaching its decision.

3 The Applicant is the landlord and freehold owner of the building at 82 Marine Parade Brighton East Sussex BN2 1AJ (the property).

4 The Respondent is the tenant of the first and second floor flat situate at the property.

5 The lease under which the Respondent holds the property is dated 4 October 2004 for a term of 199 years from the 24 June 1971 and was made between the Applicant of the one part and Stuart Creggy of the other part (pages D1-D15). The Respondent acquired his interest under the lease from Mr Creggy on 15 February 2011.

6 Clause 2(13) of the lease contains a covenant by the tenant in the following wording:

“(13) The demised premises shall be kept and used only as a private residential flat in the occupation of one household”.

7 The Applicant alleges that the Respondent is using the premises for business purposes in breach of Clause 2(13).

8 The Respondent asserts that the freeholder gave him written permission by letter from his solicitors dated 8 December 2010 (page B16) to use the premises for incidental business purposes. The paragraph relied on states: ‘The freeholder has no objection to the property being used for business purposes provided that this is incidental to the main residential use. The freeholder would not wish the premises to be sublet for business purposes’. He

Respondent's business user of the premises extends beyond the 'incidental' nature for which permission appears to exist.

16 Commonhold and Leasehold Reform Act 2002 section 168

No forfeiture notice before determination of breach

(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.

(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) But a landlord may not make an application under subsection (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.

Name: Judge Frances Silverman
as Chairman **Date:** 23 June 2015

Note:

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.