



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

Case Reference : **MAN/OOCK/LBC/2016/0005**

Property : **53 Hepscoth Drive, Whitley Bay NE25 9 XJ**

Applicant : **Spacechange Residents Management Ltd**
Represented by : **Brannen & Partners**

Respondent : **Dr Stephen Baker**

Type of Application : **Commonhold & Leasehold Reform Act 2002
Section 168(4)**

Tribunal Members : **Mr L Bennett (Tribunal Judge)**
Mr J Holbrook (Tribunal Judge)

Date of determination : **14 June 2016**

DECISION

Summary decision

1. The Respondent has breached covenants in respect of the carrying on of a trade or business and use of car parking spaces at the Property.

Application

2. Spacechange Residents Management Company Limited applies for a determination under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that Dr Stephen Baker has breached Lessee's covenants within the lease of the Property 53 Hepscott Drive, Whitley Bay, NE25 9XL dated 24 July 1989.

Background

3. The Applicants are the proprietors of the freehold and successors to the Lessor's interest created by a lease of the Property. The Respondent is the Leaseholder.
4. The application was made 7 March 2016.
5. Directions made 1 April 2016 by Judge J Holbrook included "The Tribunal considers it appropriate for the matter to be determined by way of a paper determination....." The directions gave opportunity for the parties to request a hearing. Neither party made such request.
6. The Applicants' submissions in response to directions include copies of the Freehold and Leasehold Land Registers, copy lease, a statement of case with submissions, relevant correspondence with the Respondent, photographs illustrating the use complained of and other photographic evidence illustrating an activity.
7. The Respondents' submissions were received by email.
8. The Tribunal convened on 14 June 2016 without the parties to determine the application.

The Lease

9. The Lease dated 24 July 1989 is made between Turney-Wyle (Construction) Limited of the one part and Stephen Baker of the other part.
10. The Fourth Schedule of the Lease contains Lessee's covenants.
11. Paragraph 7(b) states "not to use the Demised Premises or any part thereof nor allow the same to be used for any illegal immoral or improper purpose and not to carry on any trade business or profession therefrom."
12. Paragraph 7(c) states "not to use the Car Parking Space other than for the parking of one private motor vehicle."

Law

13. Section 168(1) of the Commonhold and Leasehold Reform Act 2002 (the Act) states: "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."
14. Section 168(2)(a) states: "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
15. Section 168(4)(a) states: "A landlord under a long Lease of a dwelling may make an application to the First-Tier Tribunal for a determination that a breach of a covenant or condition in the Lease has occurred."

Evidence and submissions

16. The Applicant states that "The subtenant of 53 Hepscott Drive is believed to be using the development's private parking spaces to conduct the trade of motor vehicles." Photographs and printouts of advertisements show such activity within the car park. A photograph also shows a commercial vehicle in the car park, a large van stated to be there for sale. The photographs and advertisements are dated between February and April 2016.
17. The subtenant named as Mr Craig Smith uses gumtree.com and is said to have 13 vehicles for sale on 19 April 2016 with the development's car park recognised in the main photographs for 7 of the vehicles. Copy correspondence dating back to July 2015 between the Managing Agent and the Respondent sets out these concerns. There is specific reference to breaches of the Lease and advice that the Local Authority Planning Control Office have been informed.
18. Because of concerns, the Managing Agent placed parking plans in the communal areas, the individual bays were numbered in March 2016.
19. The Respondent's submissions include that the Managing Agent is also contracted by him to manage his letting and has been in contact with his subtenant who has ceased the activity and removed vehicles. He comments on the activity of the Managing Agent in renewing the sub-Lease every 6 months and the opportunity to make the position clear to the subtenant. The Respondent considers it reasonable to expect the position to have been resolved by the Managing Agent and that he has acted in good faith.
20. The Managing Agent has written on behalf of the Applicant stating that different divisions of Brannen & Partners are involved although both have made contact with the subtenant and "this has not resolved the issue to the Managing Company's satisfaction."

Tribunal's conclusions with reasons

Our conclusions are:

21. We note that the covenants specified by the Applicants, their terms are clear. The submissions potentially show clear breaches of the Lessee's obligations. The photographs and advertisements are persuasive. The Respondent has not challenged that the activity has occurred, to the contrary, his submissions are on the basis that it has. We find that there has been breaches of both covenants as detailed by the Applicants.
22. The Respondent submits that responsibility lies with his letting agents, the same firm instructed by the Applicant to manage the Property. Further, that the breaches have now ceased. Neither point can affect the requirement of the Respondent as Lessee to observe his Lease covenants. It is immaterial whether the Property is sublet as he remains responsible for breaches, the Applicant does not have direct covenants from his subtenant and even if so, they would not vitiate that requirement. If the offending activity has ceased it cannot backdate and override the fact of previous breaches although this may be relevant in any further action taken following our finding of breach.
23. In summary we conclude that the Lessor has breached the Lease as claimed by the Applicants.

Order

24. The Respondent has breached covenants in respect of the carrying on of a trade or business and use of car parking spaces within Paragraphs 7(b) and 7(c) of the Fourth Schedule to the Lease made 24 July 1989 in respect of the Property.